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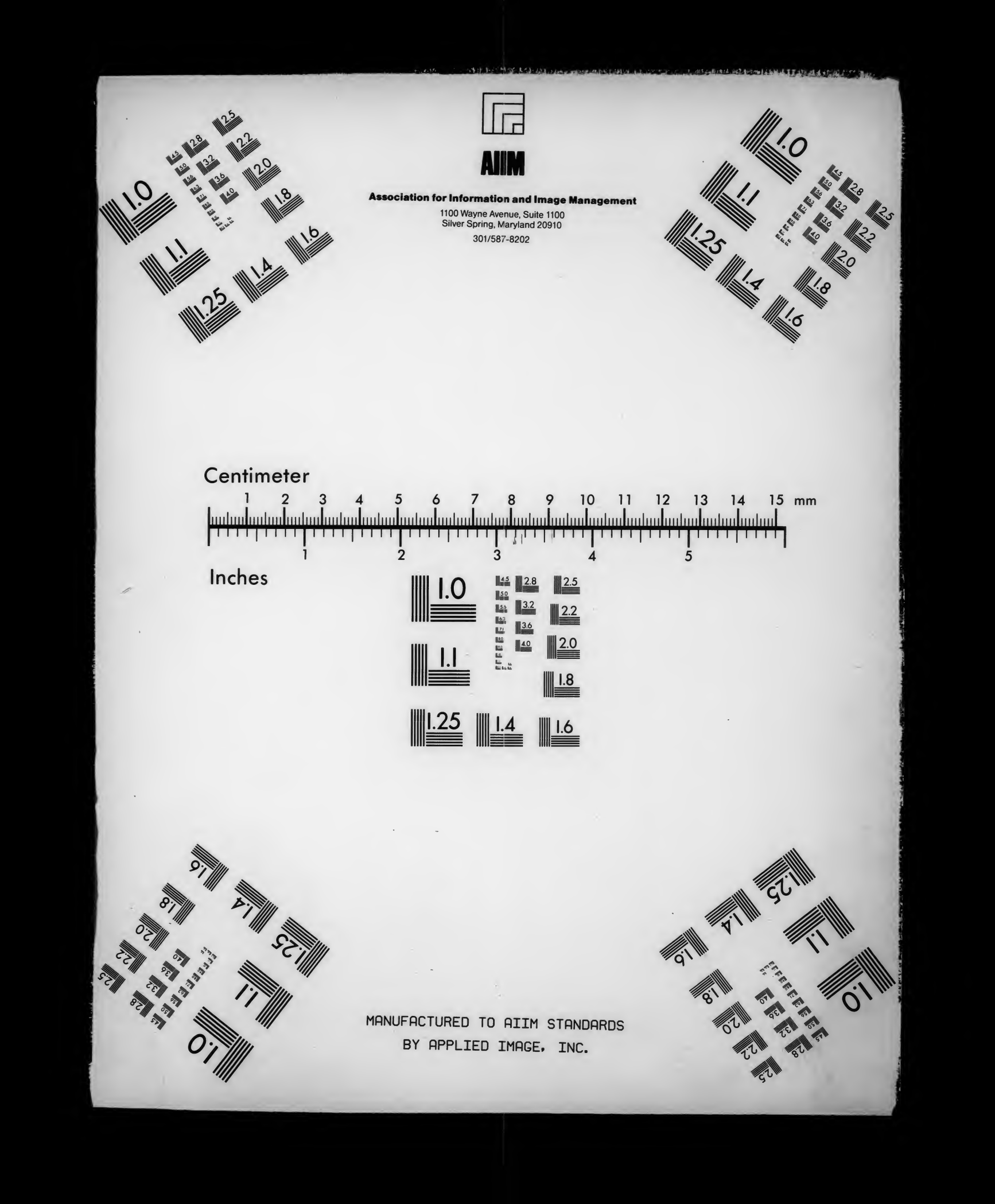
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# THE CHURCH OF ENGLAND

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## HER CHILDREN FREE TO WHOM TO OPEN THEIR GRIEFS.

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A

# LETTER

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TO

## THE REV. W. U. RICHARDS,

(MINISTER OF ALL SAINTS, ST. MARY-LE-BONE.)

---

BY THE REV.

**E. B. PUSEY, D.D.**

(REGIUS PROFESSOR OF HEBREW; CANON OF CHRIST CHURCH;
LATE FELLOW OF ORIEL COLLEGE.)

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"Ut inveniat gratiam qui vult confiteri peccata, quærat sacerdotem scientem ligare et solvere."—*De Vera et Falsa Pœn.* § 25.

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# CONTENTS.

PAGE

Introduction . . . . . 1
Questions raised as to Absolution . . . . . 8
Jurisdiction, the Gift of a Power within certain limits, in order to prevent interference, illustrated by Canons . . . . . 9
Does the Church of England leave the power of the Keys unrestrained in the hands of her Presbyters? . . . . . 16
Meaning of the Church's Direction "Let him come to me or to some other" . . . . . 17
Statement of Contemporary Rules, with a view to illustrate these words . . . . . 18
Restrictions placed by the Council of Lateran, that all must confess to their own Priest, and not to another, except by his Permission . . . . . 19
Statements of Councils of Florence and Trent . . . . . 21
Explanation of the word "Jurisdiction" as relates to the power of the Keys . . . . . *ib.*
Jurisdiction may be conferred directly or indirectly by leave given to the Priest to absolve, or to the Penitent to confess to whom he will . . . . . 28
Delegated jurisdiction . . . . . 29
Various ways in which such jurisdiction is given in different cases; and persons are not restricted to any given Priest . . . . . 30
I. The Pope. Various Theories. The truest Theory implies that Jurisdiction resides in all Priests, if it be used lawfully . . . . . 32
II. All Bishops and Prelates exempt (Authority from the law) 37
III. All Priests (by custom) . . . . . 40
IV. All laity to whom their Parish Priest gives leave *not* to confess to himself . . . . . 48
Choice in this case entirely unrestrained . . . . . 49
Provision of the English Church . . . . . 50
Jurisdiction in this case from the law permitting . . . . 51
V. Classes who had leave given them by Bulls from the Pope (by law) . . . . . 54
VI. Orders to whom power to receive confessions was given without restraint . . . . . 55
VII. In probable though uncertain peril of death (by custom) . 59
Extent of this case, and largeness of the permission . . . *ib.*
VIII. Emperor and Empress, kings (by custom) . . . . . 62
IX. Vagabundi, those who had no settled residence . . . . 63
Extent of this class . . . . . *ib.*
X. Ex ratihabitione, or moral certainty of the consent of the Parish Priest . . . . . 66
Cases of absolutions voidable but not void . . . . . 67
XI. Venial sins . . . . . 70
——— equally require jurisdiction . . . . . 75
XII. Ignorance of the Priests . . . . . 76

PAGE
Summary by Reginald . . . . . 79
Results . . . . . 81
Priest without cure of souls . . . . . 84
Distinction between jurisdiction and approbation of Bishop . . 87
Special licence of Bishop not required before the Council of Trent for those either with or without cure of souls . . . . . 89
Application to the English Church . . . . . 103
Jurisdiction in English Church altered when confession ceased to be compulsory . . . . . 104
Change as to the "Simplex Sacerdos" after the destruction of Monasteries by Henry VIII. . . . . 107
Permissions may not be limited arbitrarily . . . . . 108
No limitations intended by Cranmer . . . . . 109
The words "or some other" often re-enacted when they could not be meant to be restrained . . . . . 111
Evidence from Canons of 1604, and Bishops' Visitation Articles . 114
Statement of eminent Bishops implying that freedom . . . . 122
Summary . . . . . 127
Implied objections as to the practice . . . . . 131
Objections to the practice from the supposed practice of the Primitive Church . . . . . 138
They are drawn, not from private confession, but from the public discipline . . . . . *ib.*
Choice of Confessor free in the Ancient Church . . . . . 143
Even in later times . . . . . 146
Partial change through Pope Urban II. (A. D. 1087-99) . . . 150
Freedom still remaining at that date . . . . . 155
Case of ignorance of the Priest . . . . . 156
Some held this to include moral unfitness . . . . . 158
Provincial and local regulations, relate to public discipline or to abuse . . . . . 161
No trace of restriction among ourselves before the Council of Lateran, A. D. 1215 . . . . . 165
Difference between P. Lombard before the Lateran Council and the Schoolmen after it . . . . . 166
Alexander Alensis and Aquinas treat the restriction as one of positive law; Aquinas as one then introduced . . . . . 167
Other writers . . . . . 172
Questions which are only in words . . . . . 173
Summary . . . . . 174
Meaning of the words "cannot absolve," in the Lateran Council . 176
Navarrus—return to ancient practice easy and admissible . . . 177
Abstract principles adduced against the freedom allowed by the English Church do not apply . . . . . 179
The Visitation for the Sick leaves the choice open:
(1) As preparatory to Holy Communion;
(2) As not placing restriction on the previous practice . . . 192
Negligence no argument against the Church's rule . . . . . 194
Revival, the teaching of God through the Church . . . . . 195
Practice, why silent . . . . . 196
Prayer Book, the teaching of the Church . . . . . 198

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# A LETTER,

*&c.*

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My Dearest Friend,

We have, these many years, felt alike on all things which concern the Church, the progress of Christ's kingdom, the cure of souls; so that it is natural to write to you on any new trouble which comes upon us. But in this case we have another common bond, the souls and consciences of those to whom we have ministered, and who now are liable to be disquieted, and are (as you tell me) in part disquieted by the theory of "jurisdiction," recently put out by Mr. Allies. This, as he has too narrowly stated it, would, in many cases, affect the "benefits of Absolution," which, by virtue of the exhortation of the Church of England, they have sought and received, and in it have found grace and peace. One, at least, has on that ground left the Church of England.

I have also been called upon in a written letter to answer the same question, with the intimation that the writers "purposed to make public both their question and my answer." The substance of that letter too has been made known, and souls, in whom we have both a deep interest, have been disquieted. It became the more necessary to answer it as fully as I could. Brief questions on what relates to doctrine or to the soul, often require long answers. An objection may be put in few words. In order to meet it satisfactorily, it is often necessary to enter into the whole subject. I have, in consequence, at such fragments of time as other duties and the present troubles of the Church have permitted, read through, I believe, what has been written on the subject by those of most name and weight. And now, having collected the materials, I prefer, for reasons which I need not enter into, writing the result to you.

To you, as well as to myself, many whose consciences were oppressed have come, at the invitation of our common Mother, who, consulting for the infirmity of her children, did not place them, in this respect, simply under their Parish Priest, but directed him to invite them to "come to him or to some other," to whom they could, with full confidence, unburden their souls. They came to us in simple trust in the loving invitation of the Church; and we, in the same entire confidence that the Church, by bidding them come, did not empower only, but laid



a necessity upon us, to receive them, did so receive and minister to them, as the Church directed. You too can bear witness with me, that if there is one part of our Ministry which God has blessed; if there be one part of our office, as to the fruits of which we look with hopefulness and joy to the day of judgment, it is to the visible cleansing of souls, the deepened penitence, "the repentance unto salvation not to be repented of," the hope in Christ, the freshness of grace, the joy of forgiven souls, the evident growth in holiness, the Angel-joy "over each sinner that repenteth," which this ministry has disclosed to us. We have often in the subsequent growth in grace and "transformation" of the soul, by the "renewing of the mind," not been able to recall to ourselves the former self which we knew of, when first a person sought to hear, through our ministry, his Saviour's Voice, "Thy sins be forgiven thee: go in peace."

> "In these a Pastor dare delight
> A lamb-like, Christ-like throng;"

for His likeness has anew by Himself been traced upon them.

For these souls we should especially be anxious, that no breath of unreal doubt or misgiving should cloud the brightness of their hopes; no untrue questioning pierce their souls. We have seen the reality of the work of the Divine Grace in their souls. We have seen it too uniformly, too vividly,

too variedly, too abounding in manifold fruits, as "God divideth to every man severally as he will," to have a shadow of doubt about it. To us all questioning seems like calling in question the work of God the Holy Ghost, "which our own eyes have seen." When we see the dry and parched ground clad with verdure which gladdens the eye, we doubt not that God hath "sent a gracious rain upon His inheritance, and refreshed it when it was weary." When we see the fever abate, the wasted form recover strength, the sunken eye look full and thankful to Heaven, we doubt not of His Hand who "bringeth down to the ground and bringeth up." When we hear how one bowed down lifted up herself, how the blind saw, the lepers were cleansed, the deaf heard, we know from Whom virtue went forth to heal them. When we see spiritual cures, the spiritual sight restored, the taste in heavenly things given back, the senses deadened to the things of sense, the conscience once dulled, now tender; the proud heart, like a little child; the hardened heart flow in tears of penitence; the soul more alive to its remaining infirmities, than it once was to whole heaps of deep deadly sin; or that great triumph of Divine Power, where one becomes eminent for the grace most opposed to his deepest besetting fault, we must adore the miracles of Divine Grace. Satan does not cast out Satan. It was His Name, through faith in His Name, which gave them their spiritual life and power and victory in Him.



But to many of these, the very humility which God has given them may hide His own work in them. With quickened sight they see defects to which they once were blind. Longing to be wholly pure and wholly God's, they feel keenly every thing which seems in any degree to separate them from Him. They feel the remaining sinfulness of their corrupt nature, and the penalty even of forgiven sin, and the evil, though unharboured, thoughts which issue from it, more than they once did actual grievous sin. They cannot have the cumulative evidence which we have of the "benefit of Absolution." They have felt in their own case "the power of God unto salvation." Yet it would seem presumptuous to rest on their own experience, as to the gift of God. But *we* have seen that ministry effectual, not in the one or the other case, but wherever it has been sought "with a faithful and true heart."

These souls then we must guard with care. For the slightest misgiving will pierce tender souls, in proportion to their tenderness.

The inquiry involves necessarily a good deal of reference to a system, which is distinct from our own, as being compulsory. For the objections raised by Mr. Allies are drawn entirely from writers who lived after the Council of Lateran had enjoined "Confession to every one's own Priest once in the year," and they must be removed out of the same sources. This I hope to do, by God's help, upon their own principles; but in doing so, I must be understood to

employ these writers as witnesses, not as wishing to bring in any theory, or practice, different from that acknowledged by the English Church. We have both felt that the restoration of Confession has been the work of God on the souls of men. Confession has been with us purely voluntary. Both of us have received those who came to us. We dared not, when our Lord's wounded sheep came to us, as invited by His Church, incur that woe: "The diseased have ye not strengthened, neither have ye healed that which was sick, neither have ye bound up that which was broken, neither have ye brought again that which was driven away, neither have ye sought that which was lost." (Ezek. xxxiv. 4.)

But we have not enjoined[1] "auricular confession;" nor do we wish to bring back any compulsory system. We wish, while there is time, to awaken those "dead in trespasses and sins;" and with the medicine which He has given, to "heal the broken in heart, and bind up their wounds."

Further results belong not to us, but to the

[1] Mr. Dodsworth (Letter, p. 17) speaks only of what he supposes might have been my practice, though I do not think it justified by the discipline of the Church of England, "by encouraging every where, if not *enjoining*, auricular confession." I could not *enjoin* what the English Church leaves free. I recommended it in my University Sermons (i. p. 58, and preface,) to those who felt that their case needed it. Else, I have not given the impulse to it. It came from within. To individuals, when consulted by them as to its use, I have advised what their case, and the peace and well-being of their soul, seemed to require, or to pray God to guide them.



Church and to God, in whose hands she and we are. I state this, because this letter may fall into the hands of those to whom both the language and the authorities will seem equally strange.

Before entering upon the subject itself, it is best, for the sake of those not familiar with the distinction which Mr. Allies has applied to the English Church, to restate the point at issue. We both, then, believe in common, that the power to absolve from sin in Christ's Name, is given to all priests through their ordination. We believe that this power is committed to them by Christ Himself, through the imposition of the Bishop's hands with the words, "Receive the Holy Ghost for the office and work of a priest in the Church of God, now committed unto thee by the imposition of our hands. 'Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained.'" We both of us believe that the power of excommunicating or absolving from excommunication is reserved for the highest order only. We both believe that on full confession of all the sins which burthen the conscience, with true repentance, the priest may, by Christ's "authority committed unto him, absolve" the penitent "from all his sins, in the Name of the Father, and of the Son, and of the Holy Ghost;" and that what he "looses on earth" is "loosed in heaven."

The question raised relates to a further point. It is whether, without any further commission, the

priest may in any case (besides the point of death) exercise the power thus lodged in him, and, by his Office, inherent in him; or whether the power lies, as it were, dormant in him, and may not be put forth without some further direct commission from the Bishop; and whether, if exercised without such further authorization, it is valid.

It is true, that the exercise of the power given to the priests by ordination may be suspended, or even taken away. The first Schoolman who wrote on this subject after the Council of Lateran, Alex. Alensis, illustrates the case by that of a hand holding a material key[2]. A priest degraded loses the power altogether, like a hand amputated; a heretical priest has it suspended, until he be restored to the Church, like a paralytic hand, until its power be restored by fresh influence from the body; a priest suspended, is like a hand tied; a monk who is also ordained, being engaged in contemplation and solitary life, is like a hand otherwise employed, and cannot use the keys, except it be allowed through obedience to the superior.

The image is one strikingly adapted to illustrate the nature of Jurisdiction. The priest holds the keys, and has authority to use them; but that use may be limited or restrained. Jurisdiction has two aspects, positive and negative. It may be looked upon as the concession of a power, or as its restriction within certain limits. By Consecration, God confers upon a

[2] Summa, p. ii. qu. 20. Art. 2.



Bishop, authority to ordain, confirm, and exercise all other Episcopal acts. By Ordination, He confers on the priest power to consecrate the Holy Eucharist, to absolve and bless in His Name. But God is a God of order: and so, for the order and well-being of the whole Church, each office is exercised, with certain limitations, within certain bounds. Patriarchs, Metropolitans, Archbishops, Bishops, Presbyters—all alike have their limits, in that their authority is restricted so that it should not interfere with others who have the same office.

This principle, that none should interfere with another's office, is laid down in the earliest Canons of the Church. It was one and the same principle in all, that none should "remove[3] the ancient landmark which thy fathers have set," nor "thrust[4] his sickle into another's harvest."

Thus the 34th Apostolic Canon forbids Bishops to "ordain beyond their own boundaries, for cities not subject to them; if any be convicted to have done this *against the will* of those who rule those cities or countries, let him and those whom he has ordained be deposed."

The Council of Antioch enlarged this (Can. 13): "If a Bishop, uncalled, go in a disorderly way to ordain or to settle ecclesiastical matters which do not belong to him, let what he doth be null, and himself, subject to the punishment which befits his disorderly

[3] Prov. xxii. 28, quoted in the Decretals, C. ix. q. 2. c. 1.

[4] Alex. Alens. l. c. from Greg. M. Ep. ad S. Aug.

and lawless undertaking, be deposed from this very time by the Holy Synod." And again in Can. 22: "A Bishop may not *invade* another's city not subject to him, nor a country which appertaineth not to him, to ordain any; nor may he appoint presbyters or deacons for places subject to another Bishop, *except with the good will* of the Bishop of the country. But if he venture this, let his ordination be null, and himself be rebuked by the Synod."

The Council of Nice lays down the same principle as to Patriarchates: "Let the ancient customs prevail, those in Egypt, Libya, and Pentapolis, so that the Bishop of Alexandria should have authority over all, since this is customary also, as to the Bishop of Rome. In like way also, as to Antioch, and in the other provinces, let the churches have their dignities unharmed."

The 1st Council of Constantinople (Can. 2) renews this: "Let the Bishops over a diocese not enter upon the Churches beyond its boundaries, nor confuse the Churches; but according to the Canons, let the Bishop of Alexandria administer the affairs in Egypt only; and the Bishops of the East govern the East only (the dignities assigned to the Church of Antioch in the Nicene Canons being preserved); let the Bishops, too, of the diocese of Asia order the affairs in Asia only; those of Pontus, Pontus only; those of Thrace, Thrace only. But let not Bishops over a diocese, uncalled, enter another for ordination, or any other ecclesiastical office. But the above



Canon about the dioceses being observed, it is plain that the Synod of the province should order the things in each province, according to what was ordained at Nicæa. But the Churches of God in the barbarian nations must be ordered according to the prevailing practice of the fathers."

In like way the Council of Ephesus, in vindicating the independence of the Bishops of Cyprus from the see of Antioch, lays down the general principle. "The same shall be carefully observed in the other dioceses also, and all the provinces, so that no one of the Bishops most beloved of God shall take possession of another province which has not of old and from the beginning been under those before him. But if any have taken possession of one, and by force brought it under himself, he shall give it back, that the Canons of the fathers be not transgressed, nor under the pretext of the priesthood, the swelling pride of worldly power creep in, and that we lose not, little by little, and imperceptibly, that freedom which our Lord Jesus Christ, the Deliverer of all men, hath bestowed upon us through His own Blood. It seemed good then to the holy and Œcumenical Synod, that to each province the rights which belong to it of old from the first, according to the practice which prevailed of old, be preserved pure and inviolate."

Of these, the Canons of Antioch and Constantinople are quoted in the Decretals[5], together with de-

[5] C. ix. q. 2.

crees as to *judgments* of Bishops, as involving one and the same principle, that no one is to invade the province of another. The decrees as to Bishops here ascribed to Pope Calixtus, are but modifications of the Apostolic Canon and those of Antioch by the Pseudo-Isidore; another ascribed to Pope Urban II. is perhaps from an uncertain collection of Canons. But all are put under one common head, which shows what is there meant. "That no Bishop or any superior should ordain the clerks of another without his leave." It is a principle of not meddling with the office committed to another.

It will make my meaning clearer to add here those other decrees, attributed to Calixtus, under the same head.

"Let no one usurp the bounds of another, nor presume to judge, or ordain, or excommunicate one in the diocese of another [alterius parochianum]; for such judgment, or ordination, or excommunication, or condemnation, shall neither hold, nor have any force; because no one shall be bound or condemned by the sentence of another judge than his own. Whence the Lord also speaketh, saying, 'Thou shall not transgress the ancient landmarks which thy fathers have placed.'

"Let no primate, no metropolitan, none of the other Bishops go to a city of another, or take possession of a district which doth not appertain unto him and belongs to another Bishop, to order any thing; unless called by him to whose right it is known to belong;



nor let him dispose, order, or judge any thing there, if he willeth to retain the dignity of his order. But if he shall presume to do otherwise, he shall be condemned, and not he only, but those who co-operate with him, because as ordination, so also judging and the disposition of other things is forbidden them. For he who cannot ordain, how can he judge? No wise, doubtless, should he or can he judge."

To these are appended three Paleæ, whose authority, as being Paleæ, is perhaps less. These I will insert when I come to the subject itself. All three in common forbid interference with others. The one which relates to confession, of the 11th century, refers to a case of interference of a most mischievous sort, when a penitent who had placed *himself* under the care of one priest, withdraws himself from him. The other two forbid presbyters or deacons receiving to mass the parishioner of another.

Thus from the highest to the lowest, from the Patriarch to the Deacon, for ordaining, judging, excommunicating, absolving, admitting to hear mass, there is one principle throughout, that, in the army of the Church, "each should march on his ways, and no one break his ranks: neither shall one thrust another[6]."

To this belongs the case of the late Bishop Coleridge, which Mr. Allies brings forward to illustrate the nature of jurisdiction. He says: "A Bishop[7] who had resigned a colonial see was lately resident

[6] Joel ii. 7, 8.

[7] Royal Supr. p. 54, 55.

in a country parish, yet, though superior in power of order to the parish priest, he could perform no one act in that Parish involving jurisdiction save by the permission of the parish priest."

This is strictly on the principle of non-interference. A Bishop who, like St. Gregory of Nazianzum, resigns his cure, has none of his own. But then, Dioceses or Parishes being apportioned, he cannot, uninvited, exercise any part either of his Episcopal or his priestly office in other Dioceses or Parishes, without interfering with the office in the Lord's Vineyard assigned to others. This does not belong to acts involving jurisdiction only, but to all acts which have been assigned to another, because they have been so assigned. He could not, without irregularity, baptize (except in peril of death), nor confirm, nor ordain, nor preach, in the Diocese or Parish of another, except by his permission, because another has been appointed to perform these offices. All these would come under the rule of not "thrusting his sickle into another's harvest." On the other hand, if an act has not been specially assigned to the Parish Priest, but he is required by the law of the Church to admit others to the performance of that act, then he has not exclusive jurisdiction in this act, and that other has all the jurisdiction necessary for that act from the law of the Church. The Bishop could not regularly, out of his diocese, perform offices which interfered with the office of another: he could absolve, on confession, before Holy Com-



munion, because, according to the law of the English Church, it is no interference. This I hope to explain hereafter.

The same principle is laid down by Gratian, in another part of the decretals, in which the reconciliation of the *excommunicate* is forbidden to Presbyters. It is forbidden as part of the Episcopal office.

"That one *excommunicated by the Bishop* may not be reconciled by another, without consulting him, unless perchance by his Metropolitan, or by the supreme Pontiff, is proved by reason and authority. For presbyters receive power of excommunicating and reconciling from Bishops, not Bishops from presbyters; and therefore priests can reconcile those excommunicated by priests; but those excommunicated by Bishops, priests cannot reconcile. For the reconciliation of penitents is part of the episcopal, not the priestly office."

The details which Gratian gives here, will come to be considered hereafter. This will suffice to explain what I conceive to be the principle involved. The Church has power to regulate and limit the functions of her ministers, or again to remove those limitations. Thus, strictly as the rule that one Bishop should not enter upon the diocese of another was enforced in the African Church, the case was excepted if a Bishop should not be diligent in converting the heathen within it. The Church, in this case, interfered, that the power given for the saving of souls, should not be retained to their loss.

But if the Church makes any regulations, then she may either make void, *ipso facto*, what is done contrary to them; or she may annul it afterwards, so that it should remain valid, until, or unless she annuls it. Again, she may, if she see good, change those regulations, so as to make them more or less stringent. It is acknowledged, on all hands, that considerable changes have been made in the penitential discipline. While public penitence was enforced, one who had publicly offended could not be admitted to communion, without undergoing that course of penitence. What was condemned as irregular then, is the received practice in the Roman Communion now. The Church may adapt herself to the necessities of the times, within certain limits, and bend to what her children will endure, lest by a severity healthful in itself, yet unsuited to their weakness, she risk their salvation, leaving them to plunge into a heathen life or into schism.

The letter sent to me puts apparently but one question; "Has the Church of England left the power of the keys, unrestrained, in the hands of her presbyters, so that they may use it freely for all who come to unburthen their griefs to them?" A second perhaps lies involved in it, any how in Mr. Allies' pamphlet, "Has the Church of England the right to leave the power of absolving, freely in the hands of her presbyters, without restricting them?"

To both these questions I can, without hesitation, answer "Yes." And so I might dispense with a third



statement, that even if such exercise of her office had been irregular, it would not follow that the acts would be invalid, unless subsequently invalidated by authority. They would stand, unless rescinded.

To take them in order.

After mentioning the Constitution of Archbishop Reynolds[8] (Abp. A.D. 1313—1327), he says,

"We have not overlooked the sentence in the exhortation appointed in the Common Prayer Book before Communion. 'Let him come to me, or to some other discreet and learned minister of God's word, and open his grief, &c. &c.' But, after the best consideration in our power, we have come to the conclusion that so far from weakening the difficulties which we have suggested, it strengthens their force. The words 'some other' &c., would, of course, be intended to be understood only in the sense of the common practice and discipline of that time, 1548, in this matter: and we believe there is not any doubt whatever what that practice and discipline were; so that the 'some other' &c. would of necessity be a priest, who had been appointed by the Bishop, for that diocese or district."

In their plain and natural sense, the words "Let him come unto me, or unto some other discreet and learned minister of God's word," do (as all must have felt, and as we have all shown by our actions, whether in confessing or in receiving con-

[8] See below, p. 20.

fessions,) leave it quite open to any of us to choose whom we think best fitted for our own case: they almost oblige us to receive any who come to us. This we have acted upon, and the interpretation which thousands have, unbiassed, put upon the words, is a strong testimony that such is their real meaning. It is assumed, however, in Mr. Allies' letters, that their meaning must be, not what they would obviously mean, in the present day, but whatever was meant by them, when they were first used. And this he fixes at 1548, the date of the first Communion Office under Edward VI.

This date is essential to his argument. For at any later time it is quite plain that there was no priest appointed for "each diocese and district," and so that the Church could not mean to restrict the liberty of choice, left to the laity, in the way that he would limit those larger words.

And therefore he takes exclusively this date, in order to obtain a contemporaneous exposition corresponding with the view which he has taken of the necessity of jurisdiction to the right exercise of the power of the keys.

But, 1st, he has mistaken the practice antecedent to the Reformation to which he appeals, as explaining the words in the Prayer Book of 1548.

2. Even at this date, the words would not restrain the freedom of choice now allowed.

3. There is no ground for fixing this date exclusively, but the contrary.



I. In order to ascertain this contemporary practice, it is necessary to begin with the period immediately antecedent to the Reformation. In so doing, I must waive, for the time, the consideration of that period, upon which the Church of England rests her practice, the centuries antecedent to the Council of Lateran, and will take the practice established by that Council. Reserving, then, the consideration of the primitive practice, and its bearings upon the present question, I would now take the case subsequent to the Council of Lateran, A.D. 1215, simply as illustrative of the point referred to, *i. e.* who (according to that rule) the "some other discreet and learned Priest" would be.

The Council of Lateran established in this respect two points. (1.) "Let all the faithful of both sexes, as soon as they come to years of discretion, faithfully confess all their sins in private, at least once a year, *to their own priest.*" (2.) "If any one for a just reason desire to confess his sins to a priest not his own, let him first ask and obtain leave from his own priest, inasmuch as otherwise the other cannot absolve or bind him." I waive *now*, as I said, the question as to the previous state of things, and take only that, which existed between 1215 and 1548, subsequent to the Council of Lateran, and anterior to the Council of Trent.

The rule then was established, that all must confess to their own priest once in the year, and none must leave that priest for another *without his leave;*

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otherwise the Church pronounced that the absolution which he obtained would not be valid. This states the duty of *parishioners*, and this is the point which was enacted in this country in the Constitution of Archbishop Reynolds, quoted by Mr. Allies. (Abp. A.D. 1313—1327.) "Let[9] no priest admit to penitence the parishioner of another, *except with the permission of his own presbyter* or Bishop."

This so far describes, then, the duty of parishioners. They might not go to another priest, without the leave of their own, or (if there were any occasion for the higher authority to supersede the lower) of the Bishop. But what if they had the leave of their Parish Priest? *This* is the question at issue. For (as I shall show) that leave might be given either individually, or generally, to a whole parish, or by law or by custom.

The 2nd Constitution of Archbishop Reynolds[10], which Mr. Allies quotes, appointing confessors, relates solely to the Clergy, and the "two fitting Presbyters of competent knowledge and approved character" were to hear *their* confessions only.

The Constitution is directed against the practice of the secular Clergy, either not confessing at all, or going to the monks at their own option. It is an application, as to these, of the Council of Lateran, that none should admit to penitence any one, subject to another.

[9] In Lyndwode de pœn. et rem. c. *Sacerdos*, f. 179. v. ed. 1501.
[10] Ibid. c. Cum sæpe, f. 181. v.



In none of these is there any provision as to the case of those who in any way had leave, *not* to confess to their own priest. This Mr. Allies supplies from the "instructions of Pope Eugenius IV. to the Armenians," which, Le Plat says[1], "is not to be confounded with the Council of Florence," A.D. 1439. In these it is laid down, "The minister of this Sacrament is a priest, having authority to absolve, either ordinary, or by the commission of his superior;" and subsequently to these times, the Council of Trent laid down, "that the absolution must be held to be of no force, which a priest pronounces on one, over whom he has not ordinary or delegated jurisdiction." But the very question is, what is "delegated jurisdiction?" And by whom is it delegated? by the Priest, or by the Bishop, or by the Church? or by each in different cases? directly only, or indirectly?

To this question I would now proceed. But it may save much confusion, first of all to consider the meaning of the word "Jurisdiction" which occurs very often in Mr. Allies' letter, but which is not so plain to ordinary readers as he has imagined. There are, in the later Roman Church, three chief different views of Jurisdiction as relates to the power of the keys. It has been held, (1.) that the power of the keys and Jurisdiction are both given, by Divine right[2], to Priests in their Ordination, liable

[1] Monum. ad Hist. Concil. Trid. &c. t. iv. p. 304, not.
[2] Hence De Palude remarks (in 4. d. 22. q. 3. concl. 2.) that

to subsequent limitation by the Church, but free and complete until or unless so limited; or (2.) that the power of the keys is given by Christ Himself in Ordination, but Jurisdiction, by a subsequent act by the Church[3]; or (3.) that both are given by Ordination, yet so that they should be exercised upon those whom the Church should assign. And to this last I may add, that either the positive law of the Church [jus], or (when not contradicted by that law) received custom [consuetudo], are considered sufficient to constitute Jurisdiction.

Of these the first and the third virtually coincide in principle. They differ as to fact. In the first, it is asserted that, for a long time, nearly thirteen centuries, no such limitation was imposed. In the third it is asserted, on the authority chiefly of the false Decretals, that at no time did the Church leave persons absolutely free. But they agree in this, that when the Church has limited it, Absolution can only be validly given, in conformity with those limitations.

The meaning of the word jurisdiction, then, may

" no confessor, be he who he may, when he absolves, ought to say, ' by the authority of the Bishop or Curate,' " &c. (Ap. Nav. in c. placuit, n. 46.)

[3] " In that way in which authority is in man, it is equally in every priest; but the superior gives him the matter, but no power, except when he first ordains him." De Palude ap. Nav. l. c. " For as a prince," De Palude adds, " gives any artificer licence to use his art, which is not to give him the power of his art, but to allow him the matter; so orders are given and confessions heard in the parishes of others by their licence."



be resolved into these two: (1.) an authority vested in each Priest, which he may exercise whenever any one (according to the law of the Church) submits himself to it. (2.) " An authority *over certain individuals* given to a certain priest."

1. In the first of these senses, De Palude and Navarrus, and ultimately Vazquez (correcting all his predecessors, on both sides), illustrate the jurisdiction given to Priests in Ordination, by the Office of the Chartulary Judges.

"These" (I will use the words of Vazquez[4]) "had power from the Sovereign to judge in the causes of those who were willing to submit themselves to them. These then had from the King power to give judgment [jus dicere], and so jurisdiction; for jurisdiction is nothing else than the office or faculty of giving judgment, or pronouncing sentence, as all skilled in Latin, and in civil and canon law, teach. So, then, this only was lacking to them, that the Emperor did not designate to them any one in particular, *i. e.* no prisoners to be judged, no matter on whom to exercise their power. But the Emperor only assigned to them in common whosoever wished to subject themselves to their judgment. When, then, any subjected themselves, they did not give to the Chartulary Judges power of giving judgment. For this they had from the Emperor. But they furnished a definite matter for judging, which the Emperor did not define, but left to be defined

[4] In p. 3, qu. 93. Art. 1. Dist. 2. n. 23—25.

by the will of those who wished to be judged; which matter failing, their power could not be exercised, because, besides that power, there was required a definite matter, in order that the exercise of that power might ensue.

"Much of this sort is the case with Priests. For in their Ordination they receive orders, not only as regards the power of consecrating, but as regards the power of giving judgment as to sins, when it is said to each, 'Receive the Holy Ghost; whose sins ye remit they are remitted, &c.' By which words he is made a Chartulary judge, and receives authority to give judgment as to sins; and this power, which is required on the part of the judge, and which is truly called jurisdiction, the Priest cannot receive from the Church; for then he would have from the Church the power of judging, which is false."

Vazquez goes on to say, that priests had not from Christ, in ordination, jurisdiction by Divine right over all who willed to submit themselves to them, as to Chartulary judges. For if they had, then the Church could not limit this right; as no Prince inferior to the Emperor could take away or narrow the jurisdiction given by the Emperor. Jurisdiction, then, he holds, to be given to Priests in ordination; so that it is not given afterwards, but only persons are assigned towards whom it may be exercised. But these (as I shall show hereafter) may be assigned either definitely or vaguely, by law or by custom.



And with this even Suarez agrees, in fact, so as to regard it as a question of words, whether it be said that priests have jurisdiction given to them in Ordination itself by Christ, and that the Church directs who should be subject to it, or that the Church confers jurisdiction. He states the opinion thus: "As[5] those Chartulary judges had power from the Emperors, so now Priests have it from Christ; and as they, from the grant of the Emperors alone, had not any subject to that power, so neither have Priests from the force of ordination alone."

De Palude and Navarrus carried that analogy of the Chartulary judges further, and said that Priests have this power towards any one who places himself under them. Suarez says, it differs in this, that, in the Church, persons have not the option, which they had by that secular law in the things of secular law, to submit to whom they will, but that the Church decides to whom they are to submit themselves. Yet in that Navarrus says, "those who lawfully [legitimè] submit themselves, he must mean the same thing; since 'lawfully' is according to the law of the Church, in whatever way this be ascertained, whether by positive law or custom[6]."

[5] Disp. 16. de pot. rem. pecc. s. 3. n. 25.

[6] "Every priest, when he receives order, receives, in habit, jurisdiction to absolve and bind all those who *lawfully* submit themselves; and all priests are as Chartulary Judges, *i. e.* judges to whom is given the power of judging the causes of those willing to submit themselves to them, of whom Bartholus and others treat in l. 1. ff. de jud."—Nav. in c. Placuit. n. 19. "From the

2. The second sense of jurisdiction occurs in the following passage of Dom. Soto: "A person's[7] own Priest [proprius sacerdos] is one who can by his *jurisdiction* compel one under him [subditum ejus, 'his subject,' as Mr. Allies says] to the Sacrament," *i. e.* Confession. In this sense, Jurisdiction, of course, must be given by a subsequent act. It is not a right only to receive penitents who willingly submit themselves; but a power to compel persons to submit to the discipline of the Church by making confession as the Church appoints, and, in the actual discipline established by the Council of Lateran, yearly. This power, can of course, be fully vested in one person only.

Gregory de Valentia reduces this authority "over" the person to be simply "lawful authority" in this matter. "The[8] power of jurisdiction we call some

above, it appears that every Priest has jurisdiction in the Penitential Court; nay, that is conferred upon him, annexed to orders, although he hath not the exercise of it, save over those who are *lawfully* placed under him. Yea, he seems to have it together with the exercise towards a certain class of men, so far at least, that without leave from any one he can hear, and loose, and bind them. As those in extremities, or who, since their last confession, have committed venial sins only; Bishops, or their superiors, and other prelates immediately subject to the Pope. And so they are a sort of chartulary judges, whose jurisdiction can be enlarged (according to l. 1, and the notes there by Bartholus and all, which holds in spirituals with leave of the superior). So then this too can be extended, although he exercises no other cure of souls." Ib. n. 52.

[7] In iv. Dist. 18. q. 4. Art. 2.

[8] In 3 p. Disp. 9. qu. 10. punct. 2.



sort of authority towards the other, as one placed under him, *at least as relates* to that act of knowing his conscience, and loosing and binding." And in a case where the law did not interfere to prohibit it, he admits that the voluntary submission of the individual gives sufficient "jurisdiction," as in the case of slighter sins. "Of those [venial sins] which the penitent confesseth voluntarily, he can with a certain jurisdiction and authority inquire into those things which he thinks to appertain to the right execution of his office, and to helping the penitent. And this right [jus] the Confessor acquires, provided that the penitent himself (as relates to such confession) hath of his own accord subjected himself to the Confessor. For by this very act he giveth power to the Confessor of executing his office after some sort with a certain authority."

This distinction is of great importance as regards the Church of England, that we may not apply to her, rules which belong to a different system. The Parish Priest in England is not the "proprius sacerdos" of the Council of Lateran. For the "proprius sacerdos" was one who might require his parishioners to confess once in the year, previous to Communion, from which if he abstained, he was, if he died, deprived of Christian burial.

Since, then, the Church of England has left it free to us to confess or no, no one is, in her, subjected to another by this sort of jurisdiction. The other sort of jurisdiction is given to all priests. The

power to absolve those whom they lawfully may, is given them in ordination."

The real question then is, not whether all priests have the jurisdiction (*i. e.* the authority jus dicendi) necessary, but whether, or in what way, persons may *lawfully* (legitimè) place themselves under that authority.

It will be convenient also to notice here, that as to jurisdiction, it was regarded as one and the same thing, whether leave was given to a Priest to hear the confession of those not ordinarily placed under him, or to the penitent to confess to any such as are not ordinarily placed over him. He who could give leave in the one way, whether the Pope, or the Bishop, or the Parish Priest, could, to the same extent, give it in the other. To give a person leave to choose to whom he will confess, was held, ipso facto, to give authority to the person whom he chose, to receive that confession. Thus Suarez says [9]:—

"Jurisdiction may be granted, or delegated, in two ways; (1.) directly, by giving jurisdiction to the Priest, as when a Parish Priest takes any qualified Priest as a coadjutor for a time, or a Bishop or the Priest commits this office to any one: (2.) on the part of the penitent, as when a faculty of choosing a Confessor is granted to any one." And on this 2nd mode, "Man [1] can give this faculty. For there is

[9] Disp. 26, de min. Conf. Del. init.

[1] Disp. 27. s. 1. n. 1, 2.



no more ground against delegating this jurisdiction in this way, than in the other. Whence the same power is required in a Prelate of the Church, or Pastor, to grant this faculty, as is necessary to delegate jurisdiction. The same power also suffices; for it has, as I said, the same effect. It is of no moment in which way it takes place, nor doth it require greater jurisdiction. So then, whosoever hath ordinary jurisdiction in this Court in regard of the faithful, can give them the power of choosing a Confessor; provided that the Curate has the conditions requisite to enable him to delegate his jurisdiction to him. For this condition is always to be understood. As, conversely, so often as an ordinary Pastor delegates his jurisdiction to a Priest, it is necessarily understood to be relatively to those faithful, who are subject to his jurisdiction: for those two, as I said, are correlative and connected. So, then, each of those ordinary Pastors [the Pope, the Bishop, the Parish Priest,] can give this faculty. For each is an ordinary superior in this Court. So, then, on the one hand, he can give the faculty; on the other, because he has the ordinary power, he can delegate it."

Mr. Allies' perplexity has arisen, partly, in applying to a system where confession is not compulsory, maxims of a system where it is; partly, in his taking the words "delegated jurisdiction" in too narrow a sense, even on the principles acknowledged by

Roman writers themselves. For he contemplates only two cases; "ordinary jurisdiction," in which, together with the cure of souls, the Bishop gives "a part of his own ordinary jurisdiction *as regards such particular souls;*" or, secondly, in which he gives a "delegated jurisdiction, to one qualified by sacerdotal orders, over the whole or any portion of his flock, as to a vicar-general, or a penitentiary." To this Mr. Allies says, the only exception is, "that[2] any priest may absolve any penitent from any sin, in articulo mortis."

In which "particular case," he says truly, "the *practice* has given the jurisdiction." But then he admits another mode of conveying of jurisdiction, which materially affects the meaning in which the term must be taken, viz. practice, *i. e.* custom or consuetudo.

The idea of "delegated jurisdiction" (I trust to show on the authority even of Roman writers) extends even further than this too. It includes, among others, (1.) all cases in which the law of the Church gives to persons, liberty to choose for themselves. (2.) All cases in which the bishop or the parish priest himself gives leave to choose some other than the parish priest. (3.) All cases in which tacit consent is given by custom, for each person to choose for himself. In all these and other cases, this permission, whether expressed or tacit, (as in the case of "cus-

[2] Royal Sup. p. 57.



tom,") was, at the time of the Reformation, considered to convey jurisdiction to any simple priest, without cure of souls.

"It makes no difference," says Gregory de Valentia[3], "whether any obtain jurisdiction from the *law* (jure), or from *man* (i. e. by the concession of the ordinary minister), or from *custom*, supposing he obtain it *lawfully* by any one or more of these ways, as appears from what is commonly disputed hereon by Doctors, especially John Medina, de Conf. qu. 31, and Soto, Dist. 18. qu. 4. Art. 2."

If the word "delegated jurisdiction" be not understood in this wider sense, the maxim which Mr. Allies quotes from the Council of Trent, would, in a number of cases, contradict the practice of the Latin Church up to that time.

These cases spread over a wide field of varied character, and many of them are not directly applicable to the present case. But they are all of importance in showing what is meant by "jurisdiction." At least, they all together show what "jurisdiction" is not essential to valid absolution; *i. e.* any authority *over the individual himself*, direct or indirect, except that "authority" which Christ has "committed to" all priests to "absolve from all their sins, in the Name of the Father, and of the Son, and of the Holy Ghost[4]," all sinners who, with true contrition, confess their sins.

[3] l. c.

[4] Form of absolution in the Visitation of the Sick.

1. The case, which Roman Divines find most trouble to bring under any sense of jurisdiction is that of the Pope himself. Vazquez says that they "harass[5] themselves extremely under it," through setting up a false principle as to jurisdiction. No one, according to them, has any jurisdiction over the Pope, whence one went so far as to say that "he need not confess at all," which Almayn[6] declares to be heretical. I mention this extreme opinion, to show that the case is a real difficulty, according to the over-rigid interpretation of the words urged upon us, that "a Priest must have authority, ordinary or delegated, over the person whom he absolves." Others have laid down, that all Priests have "ordinary jurisdiction" over the Pope; which Dom. Soto[7] again rejects as absurd; for then all priests would be set over him, and might compel him to use confession.

Others[8] have said that the confessor receives special authority to that end from God. If by this, it were meant, that he received it from God Himself, then this would be a concession of the whole question, in that it would admit that jurisdiction was

[5] Jam vidimus quam variè auctores se torqueant. Qu. 93. Art. 1. Dub. 2. n. 39.

[6] Almayn d. 18. q. 1. (de pot. clav.) quotes Panormitanus for this; but P. says the contrary on the decr. de pœnit. et remis. c. omnis. Vazquez mentions it on the authority of Almayn.

[7] In iv. Dist. 18. q. 4. Art. 2. p. 462. Add Vazquez, l. c.

[8] Panorm. and Palud. quoted by Navarrus ad cap. Placuit de Pœn. Dist. vi. n. 15. M. Canus rel. de Pœnit. p. v.



given by God, "apart from the Pope and the Universal Church." If it was said, that it was given by the Pope himself, (and this is said to have been at one time the common opinion,) Melchior Canus answers: "A Bishop Deacon can give to others the authority which he has not himself, to absolve those whose shepherd he is, but those only; the Supreme Pontiff is not his own shepherd or judge; therefore he cannot commit to another the power to absolve himself." Again Navarrus[9] answers, on the principles of the law, the Pope cannot give jurisdiction over himself. "He has not jurisdiction over himself, because he has it not over a successor, (argum. l. pen. ff. de recept. arbitr. and c. innotuit de election.) and none can give what he has not." (Cap. quod autem de jure patron. l. si universæ. C. de Leg.)

Again Sylvester says, "the[1] Pope cannot be absolved in the outward court, because he cannot be bound by any excommunication, as having no superior. But in the Penitential Court, a sinner can be bound, and Christ hath not left him without remedy, but he hath a confessor, whomsoever he chooses; who, by the authority of Christ, can loose or bind him: *for, as from the beginning, any priest could absolve any one* who was willing to submit himself to him, so it is now as to him who is subject to none."

Others, again, used the Gallican principle that a Council was above the Pope, and said that the

[9] l. c.

[1] Summa v. Confessor. i.

jurisdiction was given "not[2] to the Pope, but to the whole Christian Church." And so they said that "the priest chosen by the Roman Pontiff as confessor, had jurisdiction over him by the *tacit* or express commission of the whole Church, because he has no superior in the Church but the Church herself." This was, of course, opposed by those who objected to the Gallican doctrine. It admitted the principle that jurisdiction "might be given by a tacit commission;" *i. e.* that express delegation of authority was not required. "Most[3] Italians, especially the Romans, approved of the opinion of Caietan," viz., that "the principle of absolution lies in the power of order, not of jurisdiction; that the power of jurisdiction only concurred to this, that it placed the sinner under the other, either simply, or as to those sins. Whence towards one *who could subject himself to whom he would, no jurisdiction was required in him* who ministered this sacrament." This which, Navarrus says, was extensively received, again makes it a matter of positive law; and justifies in principle, the English practice, that no special jurisdiction, beyond what is given by the law itself, is necessary in order to receive the confession of one who is free to commit himself to whom he will.

Almayn said, that "the[4] Pope was not bound to confess to a Priest, whether ordinary or delegated, but to one freely chosen by himself." This was to

[2] In Navarr. l. c. n. 27. [3] Plerisque omnibus, ib. n. 19.
[4] In dist. 18. q. 1. Art. 4.



cut the knot, being, in words, directly opposed to the statement of Pope Eugenius at the Council of Florence.

Navarrus lays down[5], "that in the court of conscience the power of those who absolve is one, *i. e.* a ministerial [power] given by God, together with the order of the Presbyterate, although a different matter is subjected to different persons," and then infers from this "the reason[6] why a simple Priest can absolve from sin, the Pope submitting himself to him; because the Priest, although a simple Priest, does, in absolving, rest upon the Divine authority; and to that authority, because it is Divine, the Pope *can, without consent of another, submit himself*, in that he has no superior, *nor requireth any consent*, nor is it unbefitting for him to submit himself to a Divine power."

And so, in conclusion, Vazquez admits and enforces, so far, the principle of Navarrus and others, which I have stated above, that Priests have jurisdiction given them by Christ, together with the power of the keys, in ordination, like "the chartulary judges;" but the individual over whom it is to be exercised is to be assigned to them by the Church; and that the Pope assigned himself, not giving to the Priest to whom he confessed, the active power, but submitting himself to it. And Medina argues from

[5] In dist. vi. de Pœnit. c. i. in princ. n. 19, 20. and in c. Placuit, n. 11.
[6] According to the gloss in c. nemo and c. sane de off. deleg.

this very case, that any one who has leave from his own priest may confess to any Priest whatsoever without cure of souls. "This is plain," he says[7], "secondly, from the case of the simple Priest to whom the Pope submits himself, who hath power over the Pope himself, on the simple ground and no other, that with the power of order he hath a subject matter, *i. e.* the Pope, who could, if he willed, subject himself to him."

"John[8] Andreas says plainly, that since he is a man who can sin, he has to *submit himself* to a Penitentiary; because he has none above him to whom he can go, he has to submit himself by himself to another—whereas he cannot, by himself, absolve himself, nor have himself absolved by another."

This solution, again, makes the restriction of confession entirely a positive law. It places the Pope in the same condition in which all Christians were, before the Church interposed to limit the use of the power of the keys. Before that, any Christian might apply to any Priest; any Priest might receive a penitent who applied to him. But the restriction being through human law, may be removed by human law, as it has been by the English Church for her children.

It must be added that, however it might be hoped

[7] Cod. de Conf. qu. 34. n. 3.

[8] In c. significasti v. jurisdictioni *in foro comp.* quoted by Dom. Jacobatius de Concilio (Bibl. Max. Pontif. T. ix. p. 317), who quotes also Anton. de Butrio and Domin. in c. i. de constit.



that one in so sacred an office might be kept by God's grace from deadly sin, yet, with the memory of the Popes of the 10th century, of Alexander VI. or Julius II., it is no abstract question how one in such high office may be at peace with God, having been severed from Him by deadly sin.

II. The same principle applies to all Bishops and Clergy, who were allowed by the positive law to choose their own Confessor.

Aquinas refers to the positive law distinctly in this case, placing the Pope and Prelates, so far, on the same ground. He is answering the case alleged: "There are some, as the Pope and Prelates, who seem to have no priest of their own, since they have no superior." He answers, "Since[9] Prelates are obliged to dispense the sacraments which the clean alone ought to handle, therefore they are allowed *by the law* to choose those who shall be their own priests, as well as confessors, *who, thus far, are superior to them;* as also one physician is cured by another, not in that he is a physician, but in that he is sick."

The law then required persons to confess to "their own priest;" the law exempted Bishops from its own rule. It is not in either case a matter of inherent fitness, but of positive regulation. Pope Gregory IX. (A.D. 1232) dispensed, in these cases, with the recent rule of the Lateran Council. "Lest[1] through

[9] Suppl. 3 p. qu. 8. ad 4.

[1] Decr. Greg. l. v. tit. 38. c. 16.

the deferring of penitence, souls be perilled, we permit (Pope Gregory says) Bishops and other superiors, and lesser exempt prelates also, that even without the licence of their superior, they may choose a prudent and discreet confessor for themselves."

You will observe that the Bishop, when using confession, is not represented as inferior to him whom he chooses as his confessor, on the ground that the other has his authority from the Pope; nor indeed was that other appointed by the Pope. The Pope allowed all these not to ask licence of their superiors, but to choose a careful and discreet confessor for themselves. The Bishop becomes so far inferior, because he goes, not as a Bishop, but as a man and as a sinner, to the Priest. Whoever makes confession, confesses, not as what he is by his office, but as a sinner. As a sinner, seeking God's sentence of pardon through the power left by our Lord to His Church, he is inferior, in that act, to him from whom he receives it. He submits himself to the other. Much more may we, Priests or laymen, submit ourselves, for the time, to those to whom, as Ministers of God, we lay open the wounds of our souls.

This is an instance in which the law permits that "one may subject himself to another" who had before no jurisdiction over him. Nor even in the limited case, if the individual to whom a Bishop chose to submit himself were a priest under him, can it be said (according to the rules of the law upon which Mr. Allies is arguing), that the Bishop gave



him jurisdiction over himself as a man, and then submitted himself to that jurisdiction. Even the Pope, as we saw, is not held to give that jurisdiction over himself. But Bishops are not limited to their own priests, nor is this even suggested by the Decretal. If the Bishop were to confess to another Bishop (and surely it would be nothing strange that a Bishop should use confession to another), he would be submitting himself to one to whom he could in no way give jurisdiction; and who, of himself, had none over him.

It is contended also [2] that Bishops were not subject *in this respect* to Archbishops, nor Archbishops to Primates, nor Primates to Patriarchs, but only in the outward Court. If this be so, it would follow, that, until the theory came in, that all Bishops were under the Pope, *i. e.* through so many centuries, all Bishops, when they did use confession, used it with one who had no jurisdiction over them. And this is probably true, since there is no proof whatever that they ever were so subject.

It is true, that an inferior or an equal cannot *give* jurisdiction; but he may submit himself to it. And the very fact that he may submit himself to an equal or an inferior, shows the more that the jurisdiction necessary is possessed already. Mr. Allies says, "a person [3] cannot make himself subject to another

[2] Vazquez, qu. 93. Art. 1. dub. 2. n. 41. & Dom. Soto Dist. 18. q. 4. Art. 2. against Sylvester and Palud. d. 17. q. 3. Art. 2. concl. 2. n. 2. and (as Soto says) "most canonists."

[3] Royal Sup. p. 56.

at his own will, for this power descends from above, and does not ascend from below." But the more that principle is true, that "power descends from above," the more clear it is, that since persons are allowed by that law to subject themselves to others, whether Bishops or Priests, those Bishops and Priests had all the jurisdiction needful lodged in them already, provided that the other could *lawfully* submit himself. The jurisdiction in this case is said to come not from the Bishop, but from the law. Yet this is only that the law *permits* the Bishop to choose his confessor. "Any[4] Priest whatever hath *from the law* jurisdiction to hear the confession of any Bishop whatever, when he is selected by him to that end, as also of any inferior Prelate whatever, such as are all Superiors whatever in any order, according to Sotus (d. 18. q. 4. Art. 2)." "The Confessor of a Bishop," says de Palude[5], "has authority, not from him who selecteth, but from the law which permitteth." Sylvester calls this, "jurisdiction, conceded or permitted by the law[6]," as a third class, distinct from "ordinary jurisdiction," or delegated in its narrower sense. But there is no difference in principle whatever, whether the law allow Bishops and heads of religious houses to choose their own Confessor, or whether it allow all the people. In both cases it is lawful authority, because the law gives it.

[4] Greg. Val. l. c. [5] in iv. dist. 17. 3.

[6] Conf. i. 2. Hence he says, that the "proprius sacerdos" [of the Council of Lateran], taken largely, is "a *lawful* hearer of confessions." See also Stephanus Auffrerius below, p. 95.



III. The power of choosing to whom they would confess, which was given by the *law* to Bishops and the superior Clergy, was, by *custom*, extended to all Clergy. These had also the power, not of choosing one confessor only, but one at one time, one at another.

In some countries, the rule founded on the Council of Lateran, A.D. 1215, as far as it included the Clergy, was removed by positive law.

"The Synod of Nismes, A.D. 1284, gave free liberty to Parish Priests and all Presbyters, to choose as Confessors whom they would, out of the Parish Priests and Presbyters of the same tract, especially Archdeacons, Archpresbyters, Franciscans, and Dominicans."

"In order that Mass and other Divine Offices might be celebrated with purity of conscience," the Council of Narbonne, A.D. 1374, (can. 18,) permitted "any Priest, as often as he needed or had opportunity, to confess his sins to any qualified Priest[7], though not having cure of souls, and to receive the benefit of absolution from him, except in ordinary reserved cases."

Two further concessions are cited from Spanish Councils[8]: "The Council of Tarragona, A.D. 1329,

[7] Conc. T. xi. App. Col. 2506.

[8] Thomassin (i. 2. 10.) quotes them from "Const. Concil. Tarrag. L. v. T. 17." I cannot find the Councils at those dates, either according to the Christian or the Julian era, in Mansi or Aguirre, but they are plainly genuine Constitutions.

Mansi, T. 25. p. 848. A.D. 1329, has a Council of Tarragona incorporating one of A.D. 1253, in can. 28, "We, the sacred

allows that any Presbyter who wishes to celebrate mass, if he have not access to his own Priest, may confess his sins to any qualified (idoneo) Presbyter, and receive the benefit of absolution."

The Council of Tarragona, A.D. 1391, extends this: "Even if his own Priest be present, as often as a Presbyter purposes to celebrate mass, we give them full liberty to confess and absolve one another of the things confessed."

But, eventually, Navarrus writes, (and all others agree with him,) that "all [9] Presbyters, among Christians every where, were wont to choose what other Presbyters they pleased, as Confessors." "Up to this day, we Presbyters, all and each, choose every where to which Presbyter we would confess, of whom many have no jurisdiction towards those who choose them. Nor can you say that they do this on the ground of custom, since custom avails not that any one can choose a confessor."

This arose out of custom, against the positive law. But custom was held to be only then not of avail when it was against the will of the superior. It is thus expressly limited in the decree of Boniface VIII. A.D. 1294, "It [1] can be introduced by no custom that any one, against [præter] the allowance of his superior, may choose to himself a confessor, who can bind or

Council approving, give to all the presbyters of our province power, that one may impart to the other the benefit of absolution, as to the sentence of excommunication."

[9] l. c. n. 28, and 12, 13.

[1] Sext. Decr. lib. v. t. 10. de pœn. et remis. c. 2.



loose him." "I answer," says Navarrus [2], "that Presbyters do this by the licence, *tacit* or expressed, of their superiors. For the Pope, the Bishops also, Archbishops, and their vicars, the other Prelates also, and Parish Priests, seeing all priests choosing to themselves confessors every where, to bind or loose them, and in no way withstanding, seem tacitly to will that it be done." "*Custom*," he continues, "*can give jurisdiction, even to one who otherwise has none*, as is said in the cap. '*cum contingat* [3],' where this conclusion is received by all. Moreover, the Pope can grant, yea, does every day grant, by his bulls which issue continually from him, to any peasant or mountaineer whatsoever, that he may choose what con-

[2] l. c. n. 33. Others for "præter" substituted "sine," without. The sense must still be the same, since, in fact, the practice, which the decree, so taken, says could not be brought in by custom, *was* brought in by custom, not by positive law, nor by express permission of Bishops. Navarrus says that the exception is virtually contained in the words themselves, or the reason of the thing. The text says it cannot be "brought in by custom that he should choose to himself a confessor without licence," "unless," Navarrus says, "the same custom, expressly or tacitly, gives to the person so chosen the actual faculty of absolving, over and above that habitual faculty which he hath from the orders he has received." He gives as a parallel instance the gloss on the words "it is against the substance of an appeal, that it should be made to an equal or inferior, (de consuetud. vi. 2.) unless," the gloss adds, "that same custom makes the judge appealed to as an equal or inferior, superior at least as to that article," according to Panormitanus (in c. fi. 2. not. de dilat.), Perusinus and Decius (in rubr. de appellat.), l. c. n. 43.

[3] Decret. Greg. lib. ii. tit. 2. de foro competent. c. 13.

fessor he wills. This then can be brought in by custom. For there seems no principle of difference between them. For if that were against the Divine law, it would not be granted by a privilege[4]. And if it is against human law only, custom can derogate from it[5]."

"All these," says Sylvester[6], [those included in the word "prælati," in which, first *by custom*, all Priests with cure of souls, although not properly "prælati[7]," and then again *by custom*, all Priests, though not in any sense "prælati," came to be included;] "according to Pet. de Palude, 'may choose one at one time, one at another,' which Decret. limits, 'so that it be not for deceit.' But Peter de Palude does not limit it; and do thou so hold; because the constitution is one of favour." Dom. Soto, a theologian at the Council of Trent, says, as the rule of his time[8], "they may confess to any one whomsoever of the religious, although any such religious be neither set forth by the Bishop, nor by his own prelate. His prelate can

[4] C. 25. q. 1. c. 6. [5] Cap. fin. de consuetud.

[6] Confessor 1. * viii.

[7] "In truth, Parish Priests are never simply and absolutely called 'Prælati' in law. Rather, in the Clementine, *Dudum* iii. 7. 2. Parish Priests are expressly distinguished from 'Prælati,' as the Gloss notes there, v. *Prælati*. Whence another Gloss on Decr. Greg. ii. 2. says, 'It belongs to a Prelate to have some Ecclesiastical jurisdiction in the external Court.'" Suarez, Disp. 27. s. 2. n. 7.

[8] In iv. Dist. 18. q. 4. Art. 2. In the margin it is noted, "the Council of Trent restrained this."



punish him, if he hears the confession of a secular priest; yet the Sacrament will hold, because the other had the power of choosing."

The Council of Trent introduced no change as to "jurisdiction," only as to qualification in the Confessor. Navarrus says "Even secular priests are not deprived of the power of choosing an approved Confessor, or one with cure of souls, although he be not his own priest" [alienus].

In 1616, Reginald[1] writes: "*Through custom*, Secular Priests, not those only who have cure of souls, but others also who are called simple priests, may choose what Priests they will, as confessors, whether regulars or seculars, provided those so chosen either have a parochial benefice, or being, through examination, or otherwise, judged by the Bishop to be qualified [idonei], have obtained approval." This last clause relates to the qualifications of the Priest, *subsequent* to the Council of Trent: it does not belong to jurisdiction. He explains the "jurisdiction" to come by the tacit consent of the Bishop. "Seeing that the Bishop, who is bound to provide as to a confessor for the said Priests, knows their custom, and is silent, there arises a *tacit licence, which gives strength to the absolutions*, causing them not to be void, through *defect* of jurisdiction; but that custom concurs only as a witness to a tacit licence[2]."

[1] For. Pœn. i. 39.

[2] l. c. c. 40. The "sacerdos alienus" is one "who has no

Suarez also says [3], that custom can give jurisdiction, as it also can take it away; whence some sins are said to be 'reserved' by custom. And as one instance of this, he mentions that "Parish Priests use this faculty [of choosing confessors] without special licence of the Bishops; whence, since they have it not by law, they seem to have it by custom."

In our own country, Priests, not being *directly* included in the Council of Lateran, had fallen into the habit of not confessing at all. This led to the appointment of confessors for each Archdeaconry by Archbishop Langton [4] (A.D. 1208—1228), Peccham [5] (A.D. 1279—1292), and Reynolds [6] (A.D. 1314—1327). The constitution of Peccham mentions the regulation as enacted before (as in the legatine constitutions of Otho[7]), but that "through the morals of the clergy, it had not hitherto been practised." The practice of priests confessing to one another seems to have continued here as elsewhere. For Lyndwode raises the question whether they can do so *without the leave of the Bishop*. And while he says that, by the above constitutions, they cannot, he

jurisdiction *over this people*." Raynald, A.D. 1321. c. 25. MS. Vat.

[3] Disp. 27. s. 3. n. 2.

[4] In Lyndwode de pœnit. et rem. v. quoniam, f. 177. v.

[5] Ib. v. licet a sanctis, f. 184.

[6] Ib. v. cum sæpe, f. 181. v.

[7] Mentioned by Lyndwode (ibid.), with the Council of Oxford under Langton and the subsequent constitution of Reynolds.



quotes authorities [8], that they "cannot do it without licence, general or special, *tacit* or expressed." But *tacit* licence was the foundation of the custom, which generally prevailed elsewhere. The constitutions must have been disused; for they provide that all priests should confess to those so appointed: Lyndwode says that "priests celebrating in a parochial church, should confess to the Rector, Vicar, or his Curate, or have their leave to confess to some other."

The same principle (Vazquez remarks) applies to the members of religious orders. "The relation of the inferiors to their Pastors, and of the Prelates to one another in their order, is by human law, through election, and yet they are subject to one another, in the court of conscience, through that law." This custom was not interfered with, even by the Council of Trent, which forbad regulars without cure of souls, or unapproved by the Bishop, to hear the confessions of seculars. "Regulars," whether priests or lay, were left under the same rule as before, within themselves.

By *custom*[1], again, a Cardinal was the priest of his own family; which, by custom, a Bishop was not, although he might, if he pleased, exempt his family from the jurisdiction of the Parish Priest. But the Cardinal in such wise had that privilege,

[8] Will. on Ray. quoted by Jo. Andr. in Summa Confess. q. 42.

[1] Sylvester v. Confessor.

that, even if he were no priest himself, he could delegate the power.

"By *custom* again," Card. Panormitanus says[2], "the Priests of 'hospices' can minister the sacraments to their household, and to the poor who live in them."

It is not matter of principle, then, but of expediency, whether the liberty given by *custom* to the Clergy to choose any priest they would, should be extended to the laity. If a Church may give leave to all her Priests to choose their own Confessors, so may she, if she will, to all her laity.

IV. Still wider is the case, in which licence is given to one "by his own priest" to go to another. It is allowed that this licence ought to be given very freely. Sylvester says of those rigid as to granting it, "With[3] whatever end they do this, if they do it overmuch, they do ill; and when they may fear reasonably or probably, that he who asks licence, would not confess truly, if it be denied him; for evil is not to be done, that good may come. Nothing hindereth that he who in himself is a less qualified Confessor, may be more qualified, as to him who is prepared to confess to him and not to another. Whence a pastor ought to be easy in this, and ever prefer lesser ills to greater. Whence St. Thomas says, that 'even[4] granting that from such a Confession, made to another than a person's

[2] Sup. v. Clem. c. 1. fin.
[3] l. c. * 13. [4] In Opusc. contr. impug. relig. c. 4.



own priest, some occasion of evil is given, yet it hath much the greater weight, that thereby many other greater evils are avoided, and many perils obviated," Aquinas speaks more strongly still, in answer to the objection to the limitation of confession to a person's "own priest." "In[5] that which is necessary to salvation, men are not to be narrowed in, lest they be hindered in the way of salvation. But it seemeth a great narrowing, if one must of necessity confess to one man, and by this, many be withdrawn from confession, either through fear or shame, or some such feeling." He answers: "In this that a person ought to confess to his own priest, the way of salvation is not narrowed, but a sufficient way is laid down to salvation. But a *priest would sin*, if he were not easy in giving permission to confess to another, for many are so weak that they would rather die without confession than confess to a certain priest. Whence they who are too anxious to know through confession the consciences of those under them, cast around others a snare to their damnation, and consequently around themselves."

Yet this licence being given, the person might freely go to whom he pleased. Navarrus says, "Observe[6] from those words, 'without his consent to whom he first committed himself,' that the consent of the parish priest suffices, that another priest may hear the confession of his parishioners. For

[5] Suppl. 3 p. q. 8. Art. 4. [6] l. c. n. 49.

nothing else is required, but his consent. Whence it follows, that he who has the faculty of choosing, may choose any priest, *even if he have not cure of souls*[7]. This is shown by the rule[8], that whoso wishes to confess to any other than his own priest, must first seek and obtain licence from his own. It requires nothing else than a licence and faculty. It appears, too, from the custom and practice *which we see every where, and which Adrianus*[9] *says, is observed every where.* For as he says, 'by virtue of the faculty for choosing a suitable confessor, they go indifferently to any priest whatever.'" Again, "*Beyond*[1] *all question*, where a power of choosing a confessor has been given *by the law, or by man*, there seemeth to be given at the same time to him chosen, power to absolve." And again, "The[2] opinion of [Card.] Panormitanus is commonly followed by all later writers, that he to whom a faculty is given for choosing a confessor, may choose for himself whom he will, whether he have cure of souls or no; and so that licence being given by the parish priest to the parishioner to choose a Confessor, is one and the same thing with power being given by the parish priest to him whom his parishioner may choose, to hear him."

And under this head comes the very provision of

[7] See further below, p. 52. 89, sqq.; above, p. 26 note, 36.
[8] Cap. Omnis. i. e. the Lateran Council.
[9] Pope Adrian VI. in iv. de Conf. dub. i. post quæst. 5.
[1] l. c. n. 43. [2] Ib. n. 41.



the English Church. For this permission to choose a priest for himself may be given not to individuals singly, but to a whole parish. Cardinal Caietan[3] says, "Licence is given in a twofold way. *Expressly*, when a Curate says to the people in common, 'Let every one go to confess to whom he will,' 'which is the same,' Reginaldus[4] adds, 'as if he said, I give to every one licence to confess to whom he will.'" "This," says Caietan, "is nothing else than to give liberty to choose a confessor for himself."

In this case, the jurisdiction of a person's "own priest" is not positively transferred to the other. The parishioner is set free from the jurisdiction in which he is, and so allowed *by the law* to go to the other. But that other derives his authority not from any transfer, but from the law which now permits him to receive the confession. This is illustrated by the case of "a[5] Parish Priest excommunicate, or an Incumbent (Parochus) who is not yet a priest, who can give this licence to confess to another, (according to Palud. in d. 17. q. 4.[6]) *as it is given every day;* and yet one, excommunicate, can transfer no jurisdiction to another (c. i. de off. Vicarii. lib. 6). And so this licence is rather the cession of a right which belongeth to him, than the committing juris-

[3] Summula v. absolutio.
[4] For. Pœnit. l. 1. c. 7. n. 68. [5] n. 51 and 55.
[6] "By one who has order and jurisdiction, or jurisdiction only, this hearing may be committed to one who hath order, though not jurisdiction, as to a simple Priest, either with a cure or without a cure." De Pal. l. c.

diction; a sort of concession, that he who is so chosen may, of his own right, hear the confession, which, before, he could not hear, on account of the division of parishes, and the prohibition of the Church. And so it is clear that any priest may by Divine right have jurisdiction, *and yet be hindered from exercising it by human law.*"

Medina again argues[7], "That no other jurisdiction is necessary besides the power of order and the subject matter, appears thence, that if a curate be excommunicate, he can depute a simple Priest to hear confessions, and yet an excommunicate Curate can transfuse no jurisdiction to another, as P. de Palude saith."

And again, "Every[8] priest whatever has the power of order whereby he can absolve any sinner if he be lawfully placed under him; for without matter subject to him, he will not be able to exercise the power. If prelates give to sinners the licence of choosing confessors, there is no need of any other licence for confessors, because those so licensed, in that they submit themselves to the person chosen, are made fit matter, whenever the person chosen may exercise the power of order."

Again, "The simple priest has the power of jurisdiction to him who chooseth him; for jurisdiction in the penitential court does not add any thing above the power of order, but the subject matter, towards

[7] Cod. de Conf. Tr. 2. q. 34. res. 3.

[8] Ib. qu. 29. fin.



which the priest may exercise his power. But this he has from the voluntary subjection, by which such parishioner who hath licence to subject himself willeth to do so."

"Every 'own priest,'" says Sylvester from De Palude, "who, by ordinary right can hear confessions, can commit this to another." "Every ordinary hath cure of souls through election; whence he can give leave to any one under him to confess to another."

This right, or rather duty on the part of a deacon, to give leave to one of his flock to confess to another priest, is "admitted[9] by all;" the case of a Priest excommunicate is limited by Reginald[1] to those not publicly excommunicated.

A different sort of case is put by Almayn[2], in which the "jurisdiction" is apparent only. "When a cure is contested (or, others add, is obtained by simony), and he who has no right to the cure is in possession, and at last in the end it is declared that he had no right, it would follow that those who had confessed to him were bound to confess again, and that they were not absolved, because he had no jurisdiction over them. This is plain. According to the opponents, it is of Divine institution that he should confess to one who has jurisdiction in relation to him whom he absolves. Therefore he would be

[9] Nav. l. c. n. 140.

[1] c. 7. de jurisd. del. n. 57. The notorious striking of a clerk is also excepted.

[2] Dist. 18. q. 1. Art. 4.

bound to confess the same sins. But this is not practised." Therefore, in this case, the penitent having done, as far as in him lay, what was required by the positive law of the Church, then, if this relation to his parish priest be a matter of order only, and of the discipline of the Church, the absolution, although irregular on the part of the priest who administered it, would avail to him, receiving it rightly. But if it were of Divine Institution that he should have jurisdiction over him, then the absolution would not avail when he had none. If it were said, that the Church *considers* him as having jurisdiction over him, until it is proved that he has none, then this is a matter of positive law, which, as being positive, the Church may alter.

Navarrus again says [3], that if any one were by the law itself deprived of his title, and possession of right, yet not so notoriously, but that in fact he retained possession and was *tolerated* by his superior, in that case what was done by him would be valid in the Court of Conscience.

The same sort of argument might be drawn from the times of the Anti-Popes. No true jurisdiction could be conveyed from one who had none himself.

V. The same freedom was enjoyed in those very numerous cases, in which the Pope gave permission to persons or classes of persons, sometimes to all the

[3] In gloss 3. n. 179-80, quoting the gloss on the c. dudum v. deceptæ, and Panormitanus, and Raven. arg. l. Barbarius ff. de Offi. præt.



members of whole confraternities, to choose their own confessor. The extent of these permissions has already been mentioned by Navarrus [4]. He says in another place, "We [5], *day by day*, obtain from the Roman Pontiff, privileges, that we may choose our own confessor." "*A* [6] *great part of Christians* have, at this day, this right of choosing confessors, (by Apostolic bulls and privileges,) the confraternity of the Holy Sacrament of the Eucharist which our Lord Pope Paul III. has lately instituted, being now formed every where."

There is no difference in principle, whether the privilege of choosing their own confessor be given to all, the members of a confraternity, or to a whole people. In both cases the permission is given by positive *law*.

VI. In the above case the Pope allowed the individual to confess to whom he would, without regarding his parish priest; in another, he allowed whole Orders to receive confessions when and of whom they saw good, without leave of the parish priest. These privileges are first read to have been given by Alexander IV. about A.D. 1260. Then, ten years afterwards, they were confirmed by his immediate successors, Urban IV. and Clement IV. Henricus Gandavensis, about A.D. 1280, wrote against this practice, and maintained that the Pope could not by these Privilegia supersede the confession to the

[4] See p. 43.

[5] In Dist. de Pœn. c. 1. in princ. vi. in gloss. 2. p. n. 93.

[6] Ib. n. 98.

Parish Priest. The same is held by the gloss on the Decretal, and eminent commentators, as "Archidiaconus, [Card.] Joannes Monachus, and Hostiensis [Card. Henr. de Segusio, A.D. 1262], are said to follow it[7]."

Yet even at this time the Synod of Nismes, A.D. 1284, locally, gave power to the Franciscans and Dominicans, "to hear the confessions of Clergy and laity in those towns and villages where they preach, on condition that they give the names of those whose confessions they hear, to the Parish Priests, consulting with them as to the fittest spiritual medicines for the sick by whom they are called in; lastly, that they should not attempt any thing without their consent, which the Parish Priests would always gladly give for their hearing confessions." Authority is given by the Council not to individuals, but to whole bodies, not to living individuals only, but to those unborn, who should belong to two religious Orders, to hear confessions through the whole diocese; the consent of the Parish Priest is to be asked, but as courtesy only; it is assumed that it will never be refused. If the Church can give authority to whole bodies, she may to all priests.

The recognition of the independence of these Orders was brought about through the vehement opposition of Joannes de Poliaco. He maintained that, while the Lateran Council stood, neither the Pope, nor even

[7] Suarez, Disp. 26. s. 1. n. 9; but Hostiensis argues for the contrary, ad loc. f. 296.



God Himself could free persons from the obligation to confess to their parish priest; because, as he said, it involved a contradiction. This he was obliged to recant, and the whole statement was condemned by John XXII.[1]: A.D. 1320. "It is now unlawful," says D. Soto[2], "to question it." It was thus established that the consent of the Parish Priest was not required for a parishioner who wished to make his confession to one of these Orders. The same privilege which was first given to the Dominicans and Franciscans was afterwards given to all the Mendicant Orders, to the Augustinians by Clement V., and the Carmelites by John XXII.[3] This affects the statement of "jurisdiction" in this way, that a person is, so far, no longer placed under a person having jurisdiction *over him*. A person who may choose one of two independent, and, as was often the case, rival authorities, is not, in the same strict sense, under either. The one had no jurisdiction *over him;* the other had, so far, only a limited and conditional jurisdiction, if he willed not to go to the other. Both had the authority, "jus dicendi," but to *him* only as he willed to submit himself to the one or the other.

The jurisdiction of the Parish Priest was then held to be entirely superseded by the authority of the

[1] Extrav. Comm. lib. v. tit. 3. c. 2.

[2] Dist. 18. qu. 4. Art. 3.

[3] Jo. Andr. in c. omnis, quoted by Navar. n. 60, "and at this day all other mendicants." Ib. in gloss. 2.

Pope. The relation of these Orders to the Bishop varied. At first, they acted solely under the authority of the Pope, without any reference to the Bishop. Boniface VIII. (A.D. 1300) restricted the Orders [4], required those who heard confessions to be presented to the Bishop, receive his licence, and then to hear confessions, not in whole provinces as before, but in the diocese and cities to which they were appointed. The Bishops might refuse individuals, not all the members of the Order. This was decreed "on account of the grave and perilous discord of old prevailing" between the seculars and regulars. This decree was rescinded by Benedict XI. four years after, A.D. 1304, on account, as he says[5], of the increased discord, and that "seven hydra's heads arose for one cut off." He gave them free leave to hear confessions, annulled any excommunications passed against it, or to impair it, forbade those who so confessed to be required to confess again to their own priest, and required any one's simple word that he had so confessed, to be taken by the parish priest Clement V., seven years after (in Concil. Vienn. A.D. 1311) repealed[6] the decree of Benedict, and restored that of Boniface.

After this, Priests belonging to religious orders had to be presented to the Bishop, in order to hear confessions in his diocese; "saving," Gregory de

[4] Extrav. Comm. lib. iii. tit. 2. c. 2.
[5] Ib. lib. v. tit. 7. c. 1. [6] Clem. iii. 7. 2.



Valentia says[7], "all peculiar privileges which religious of various orders may have as to this."

The Bishop is allowed, even on the principle of the later Roman Church (although subordinate to the Pope), to have the same power relatively to his diocese [8]. He may appoint any other to hear confessions without or against the will of the Parish Priest.

VII. Again, as Mr. Allies himself states, in articulo mortis, (or rather, more generally, "in probable, though uncertain, peril of death,") it is always allowed to persons to confess to any one.

This allowance has been commonly understood to be of the broadest kind, when danger is imminent. And so, under this rule, (according to most authorities in the Roman Church,) are included cases where is commonly peril of death [9], as in a war, or a stormy sea, or sailing when the sea is wont to be stormy, or a long voyage, or through places beset or perilous, or in approaching child-birth, or dangerous sickness, as an acute fever; "if[1] he is sick unto death, or ought to enter a just war or the sea;" "whencesoever[2] it is feared that death may result,

[7] l. c. [8] Suarez, l. c.
[9] Henriquez, de Pœn. iii. 11. Vazquez, q. 93. Art. 1. dub. 5. Covarruvias, who restricts it to the case, "when peril of death is near and with very great fear of death itself, or if it be a very probable conjecture that death is near," allows that the broader is "the common sentiment of canonists." (c. Alma P. i. p. 11. n. 8.)
[1] Sylv. l. c. n. 7. [2] Medina, q. 30.

whether war, or the sea, pestilence, or sickness." Again, the liberty to confess (in the absence of his own priest) to "any Priest," is as large as possible. In cases, not of proximate danger, (as the voyage,) a person is allowed to confess to a Priest "neither approved by the Bishop, nor having jurisdiction;" in the case of peril of death, any priest, whether suspended, or excommunicate by name, or degraded [3], or schismatic, or (as it is said by the most part) even a heretic, might hear confession and absolve from all sins, including all reserved cases and censures. And this so far, that if the sick should recover, he would be wholly free from all censures; and the obligation to confess once in the year would be so fulfilled. The penitent is obliged to prefer any qualified priest to one excommunicate or heretical, else he would be indifferent to excommunication or heresy; but in the absence of such, he is even held bound to confess to a heretic, if there be no danger of his being corrupted by his heresy [4]. If a simple Priest had begun to hear the confession, when the Bishop or Parish Priest came in, he might continue, even against the objection of the Parish Priest. Even "in a case not of extreme necessity," a person might, against the refusal both of the Bishop and of the Parish Priest, if there be any urgent cause (as

[3] Suarez, Disp. 26. s. 4. "John Medina denies that one excommunicated may. But the contrary opinion is of all the most common and most certain." Greg. de Val. l. c.

[4] Vazquez, l. c. n. 14.



not to discover accomplices or bring harm), confess to any simple Catholic priest not publicly excommunicated, and be by him absolved from all sins, including, indirectly, reserved cases and excommunications.

This again shows that the former restriction is by the law of the Church. The case was not provided for by any canon, before the Council of Trent. That Council itself appealed simply to the *custom* of the Church [5]. "Although [6] it may be inferred from many laws, it is older than all written canon law." By *tacit* consent, the Church, when limiting confession, dispensed, in this case, with her own laws. The jurisdiction is not given positively to any priest. There is no fresh act bestowing the jurisdiction. It is a rule of the instinctive charity of the Church. When she restricted the other exercise of the power of the keys, she, tacitly, by the common feeling of all her Episcopate, left, in this case, the authority, which Christ has committed to Priests, wholly unrestricted.

But, again, as by the tacit permission of the Church, all Priests have authority to receive confessions from the dying, and the absence of a special jurisdiction is no hindrance, so neither, if the Church

[5] The Council is speaking immediately of reserved cases, but uses the broad expression that "*all* priests can absolve *any* penitent *whatever*, from *any* sins or censures *whatever*." Sess. 14. c. 7. fin.

[6] Suarez, Disp. 26. de min. conf. del. s. 2.

so permits, is it in the case of penitents, though not dying.

VIII. The Emperor and Empress, "*from*[7] *most ancient custom*, confess to their own chaplains." The custom is not known to have had any origin. Suarez says, "Kings[8] and princes, especially sovereigns, are wont to be excepted; of whom we can lay down nothing, because they are *not exempt by the law itself*, by reason of their dignity or power. In this, the privileges of this sort allowed to princes are to be retained, and *ancient customs* which are to be believed to have been introduced lawfully and with consent of superiors." It is probably inherited from ancient times, when all had free choice. Kings were left unrestricted. When the case came to be explained on the principle of jurisdiction, it was accounted for by the tacit concurrence of the Pope. "The Pope's overlooking," it is added, "is equivalent to licensing it[9]." In like way, says Sylvester, "any other 'own priest' gives *licence by interpretation*, i. e. *if he overlook it*" [dissimulando]. The privilege which the Emperor had by custom, was extended by positive permission from the Pope to grandees generally. Dom. Soto says, "The Bishop of the city where they are anointed and crowned, is said to be their 'own priest.' But now, not kings only, but all grandees abound in

[7] Sylvester, and before him, "Palud. and S. Antonin. from Hostiensis." Vazq. c. 5. n. 42.

[8] Disp. 25. fin.

[9] Navar. l. c. 80, 81.



diplomas from the Pontiff, to choose, as confessor, whom they will."

The office of Confessor of the King and Queen in England, was, I have understood, only abolished at a somewhat recent date.

IX. There is another, the very opposite class, which was provided for in the same way, the homeless, the wanderers, those who had no certain dwelling-place[10]. These are, among us, accounted as part of the cure of him, in whose district they, for the time, are. But they are not, in any technical sense, under his jurisdiction. According to the rules of the later Western Church, they were obliged to confess their sins once in the year, but once only. Until then, or unless they were domiciliated for a year, (or at the time of Easter, if they had not confessed before,) they were under no jurisdiction. But they might have sins, since they left their home, which they might wish to confess. These, then, by the common, unwritten law of the Church, were allowed to go to whom they would; for they withdrew themselves from none. They are as the wounded by the way-side. Priests and Levites could not, under the Gospel, pass by on the other side. Yet, under this class, are included also others, not in that sense "vagabundi," though with no fixed abode. Such are the agents of

[10] Cum quis est vagabundus, quando domicilium quærit, qui non habet quo se conferat, quousque alicui, se subdat; nam et is sine domicilio. ff. ad municip. l. Labeo in princ. et l. ej. § Celsus et de peregrinis quidem et multis aliis dic utj. c. ii. Sylv.

proprietors, or others, whose employment allows them no fixed residence; bailiffs; travelling merchants; labourers, who work in different places for a short time, as in digging; soldiers; any who are looking out for a domicile, leaving their own, whether "travelling by land or by water;" and scholars, who are settled for less than a year. These are all included by one tacit law of charity. But they illustrate the rule of the Council of Lateran, and bear out our own. For, not being included under that rule, as having no "Priest of their own," they come "under the ancient law and confess to whom they will."

In former times, those who left their parishes were obliged to have leave from their parish priest to travel. "This[1] leave carried with it the other leave of confessing to another, if need were. Now, that custom being disused, they are supposed to have the *tacit* consent of their parish priest." Suarez[2] adds, "that it must be done in good faith. For if any were to travel, only that he might have an occasion of confessing to another, and of escaping the censure of his own priest who wished to cut off occasions of sin, this would no longer be a necessity, but mere will, in conformity neither with the intention of the Pastor, nor with the practice of the Church. And so, such confession would be to be accounted invalid, through defect of jurisdiction."

[1] Reginald, l. c. c. 7. n. 80.

[2] De Min. Ord. Conf. s. 2. n. 9.



This again illustrates how the principle of these rules is to prevent *withdrawing* from *lawful* jurisdiction, or dishonest confessions. The same act is valid, or invalid, according to the intention.

As to "soldiers," Suarez says, that Navarrus is over-scrupulous in limiting it to cases in which "they cannot easily have recourse to their own priests, because there is no *law* providing that a jurisdiction should be gained, solely through lengthened dwelling." Suarez rejoins, "neither is there any '*law*,' in the case that their own pastor were of difficult access. But if it be said, as it must be, that this could be rightly introduced by custom, and is clear, the same may be said simply and absolutely without any limitation, because, as Navarrus himself confesses, morally speaking, such access is never easy, and therefore *that custom was introduced which has the force of an universal law.*"

Yet, under this head also, the varying statements show the uncertainty as to the theory of jurisdiction. Thus, as to ordinary travellers, Suarez says that grave authors think that, strictly speaking, they lost their privilege of confessing to another priest, when the custom was left off of giving licence on setting out upon their journey. Suarez himself thinks that, considering the *custom* and *tacit consent* of Parish Priests, it is probable and true that such may confess to the Parish Priest where they are, or to Priests having delegated jurisdiction there from the Bishop. Victor thought that "they ought to confess in the

Cathedral Church;" but, as Suarez says, "without ground."

X. Another class of cases is, when there is adequate ground to think that a person's own priest is as satisfied that another should receive the confession of his parishioner, as that he should receive it himself. This is called ex rati habitione de præsenti. It is justified by the analogy of the ordination of priests by another Bishop, without leave of the Bishop to whose Diocese they belonged. The act of S. Epiphanius in ordaining Clerks out of the diocese of St. Chrysostom is alleged in favour of the reception of such clerks[3]. Sylvester says, "this[4] ground is true, if referred to the present, as when, from conjecture, he reasonably supposes, that his own priest is content." Greg. de Valentia instances[5], "if he knew that one placed under him wishes to confess to another, and is silent, and gives no indication whatever that it displeases him." This is a mere acquiescence (and it may be a tacit one) in the act of the other Priest, and illustrates how the principle in question is that of non-interference with the province of another. This should, according to Lyndwode, be "in the absence of him who has the cure." Accordingly, in a sudden emergency, one who acted with the moral certainty that the Parish Priest would be satisfied with his act, had jurisdiction enough.

[3] Reginald, l. c. n. 68. Sanchez, de Matrim. l. iii. Disp. 35. n. 20, whom he quotes, cites a large body of authorities.

[4] Conf. i. 6. [5] l. c.



The principle as to royal personages (above, n. 8.), is applied to the case of any "one priest" who "gives leave interpretatively, *i. e.* by overlooking."

I have mentioned only the ex rati habitione *de præsenti*, because most writers say that the hope that the lawful priest *will* sanction the act of going to another is inadequate. And this, because the act must at the time have been valid, or invalid; and if invalid at the time, could not be made valid by an after act. There is, however, another view, that absolutions given bonâ fide, though irregularly, were valid in themselves, unless they were *subsequently* invalidated. A remarkable instance occurs in St. Cyprian's time, already alluded to, in which a Bishop was admonished, and a Priest excommunicated, for restoring to communion one of the lapsed against the decree of the Council. Even the Bishop had no authority in this case against the higher authority of the Provincial Council. Yet the Council decreed: "We[6] thought good, howsoever, that the peace given by a Priest of God was not to be taken away, and have therefore allowed Victor to use the communion granted him." Thomassin speaks broadly as to later times. Speaking of the Council of Paris (A.D. 829), which forbade the regulars to receive the confessions of the seculars in their convents, he says, "From this[7], those lasting quarrels subsequently, between the Bishops or Parish Priests and the Monks, had their

[6] Ep. 64. [7] Vet. et nov. Disc. i. 2. 12.

rise. But there is no room for doubting that the Bishops *could* decree the absolutions of the Monks and the confessions made to them, to be invalid (invalidas decernere), since we have just declared that the Bishops were armed with the same power towards all Presbyters; *i. e.* to mark out what lines they willed, or rather what should be the practice of the Church, beyond which any thing they essayed should be null."

They had the power of making null what, if they did not make it null, was valid.

The "Prêtre Sanctifié" (a standard work on confession[8]), certainly implies that not in death only, but in life, persons went to other confessors, without the consent expressed or implied of their own, and yet that the confessions were not *ipso facto* invalid. For the writer gives earnestly the advice that priests should leave their penitents free to confess to whom they will, even when this is done without asking leave of themselves. "If your penitents are sick, you must then abstain from going to them, unless you know that the sick man himself wishes for you, and not his relations. Indeed, it may happen that some one of those whom you believe to have most entire confidence in you, may wish, under this circumstance, to apply to another. On so important an occasion, it is your duty to leave him wholly free; but if he

[8] It was approved at Rome, and is inserted in the Manuel des Confesseurs.



asks you, give him all possible help. If even you perceive or *suspect* that, without being sick, your penitents confess sometimes to others, beware of asking them about it, and still more of expressing displeasure at it; it would be the way to lose their confidence. Not to leave them free to confess to whom they will, would be to wound them on the most tender and important point, viz., their spiritual comfort."

After the Council of Trent, a case occurred involving all the Roman Catholics in this country. In the absence of Bishops, the regulars had received the confessions of the laity, without the approbation of the Bishop, which the Council of Trent required. This belonged, so far, to "jurisdiction," in that, *after the Council of Trent*, this qualification was required as an antecedent condition of jurisdiction. The confessions, however, had been heard, *bonâ fide*, since there was no Roman Catholic Bishop in England, by whom the regulars could be approved. The titular Bishop of Chalcedon, when appointed, made the acts valid.

The account is thus given by Dod:—

8th Obj.—"The[9] charge runs high against the regulars, if, for want of episcopal approbation, their absolutions were invalid from 1623 till 1655; and even till 1688, if it be insisted, that the chapters'

[9] Church History of England, vol. iii. Part vi. Book i. Art. 2. Account of R. Bishop of Chalcedon, p. 12.

approbation of their faculties was as necessary as that of the Bishop of Chalcedon."

Ans.—"The circumstance of *bonâ fide* alleviates the weight of this charge; and it was still more diminished by the Bishop of Chalcedon's prudential concession. For when he perceived that the regulars were violently bent upon maintaining their pretended exemptions, he published an authentic approbation of their faculties *pendente lite*, by which means both they and the laity who made use of them as confessors, were secured from their scruples; and the chapter never recalling the said approbation, there was no more questioning the validity of their absolution."

XI. All who have any experience in confession, know that the minds of many are as much disquieted by those slighter sins, which are called "venial[10]," as

[10] Suarez (ad qu. 87. Art. 2. Disp. 11. n. 1), after Aq., defines "venial sin" to be "sin which" although "a real evil and fault, and a degree of offence against God, leaving some, though imperfect, spot in the soul," "doth not turn away the sinner from God, and, consequently, neither deprives him of Divine Grace, nor makes him an enemy of God." Durandus (L. 2. Dist. 42. q. 6), "Sin, which induceth not a privation of the principle of the spiritual life, *i. e.* love whereby man is well-ordered towards God and his neighbour." Vazquez, in 2. Disp. 143. c. 4, "Venial sin is opposed to the fervor of love, and so causeth the soul to cleave less effectually to God by love; deadly sin separates it wholly. Venial sin, being a light fault, doth not take away the friendship and holiness with Him; deadly sin does dissolve that friendship and righteousness with God. Venial sin leaves in a man the life of grace; deadly sin takes it away."



others are by those called "deadly[1]" sins. They will frequently be a subject of confession; and are a legitimate subject of confession among us also, for the Church in her exhortation, invites all who cannot quiet their conscience. They will often be, as the soul grows in grace, the only sins to be confessed. Yet the soul grows in grace through their confession. The power of the keys is exercised as to these also; and God does give grace on its use. Now, for the confession of these, it is acknowledged by all the Roman writers, that no jurisdiction is required, other than is possessed by every priest; that any simple priest may, without any other authority than that which he received through his ordination, absolve from these sins.

The question then arises among the Roman writers, "on what principle is this freedom to confess venial sins to any priest whatsoever, to be reconciled with the theory of jurisdiction?" "In what way, or from what authority, have all priests jurisdiction as to these; from Christ, or from the Church?"

The Church has never, at any time, expressed any opinion one way or the other on the subject; she has not, in the remotest way, noticed venial sins. She has not given any authority to any priests, nor made any distinction by which these cases are ex-

[1] Litany. "From fornication and all other deadly sin." Art. XVI. "Not every deadly sin willingly committed after Baptism," &c.

empt from the law as to other sin. Navarrus says, "I[2] see no where any authority whereby it may be proved that he who has only venial sins, may confess to any confessor he wills; but if, as many affirm, this is received, I grant it." It is, indeed, allowed by every writer to be universally admitted. The only question is, "Whence or what is the jurisdiction, or is there any?"

This is a case of real difficulty as to the view of jurisdiction (as appears from the many explanations given of it), and it may help to clear up what is meant by jurisdiction. Medina[3] raises the question, whether there is any difference between these and other sins; whether all must not be confessed to a priest having jurisdiction. He argues on the current principles, that all confession of sin implies an act of judging; that therefore there must be jurisdiction; that a simple priest has none by any human law (for it is pre-supposed that he is neither the parish priest, nor commissioned by him); and if it were said that he had it by the Divine law, as from St. John xx. 23, "Whose sins ye remit, they are remitted unto them," much more must it then be allowed that every priest has, by that same Divine law, jurisdiction as to deadly sins, since our Lord makes no distinction, but rather speaks of these, in that He adds, "Whose sins ye retain, they are retained."

[2] l. c. n. 22.

[3] De Confess. qu. 36.



Medina supposes the permission to be given by the Council of Lateran; for that the obligation therein imposed, to confess once a year, relates only to deadly sins; the rule then of the same Council, that the confession should be to a person's "own priest," relates to these only; the others, then, are left free. But this presupposes that all priests have the jurisdiction necessary, when the Church does not restrain it. For not to restrain is not to give, but to leave what a person had before.

The explanation, however, on his principles, as well as on those of Navarrus, is that given by Navarrus, that all priests have, by virtue of their order, the necessary jurisdiction; that nothing further is required than that a person have leave to submit himself, and that "it is to be supposed that those who have venial sins only, have this leave tacitly, either from the law or from the lawgiver."

Navarrus supposes "that[4] the jurisdiction *was never taken away* from Presbyters," because learning or wisdom was not required for it in this case. He thinks that the object of the rule of Urban being, to secure qualified confessors, or such as were acquainted with the individual's soul, it is not to be extended to this case.

On the other hand, D. Soto[5] held that there was no jurisdiction at all, taking "jurisdiction" in his

[4] l. c. n. 23.

[5] In iv. Dist. 18. q. 4. Art. 2. ad 3.

sense; because none are *compelled* to confess venial sins; "but there is no jurisdiction where there is no power of compelling." Aquinas had said before him, "the[6] remission of venial sins requires the power of order alone."

Caietan takes the same ground. "No[7] one is *bound* to confess venial sins, and so no one is, *by the law*, placed under any confessor for these; and *therefore* any one may be sacramentally absolved by any priest from venial sins." But still he holds that there is what may be brought under the idea of jurisdiction (reductive), as in the case of the Pope, through the voluntary submission of the individual.

Melchior Canus[8] says, that it is the common opinion that all priests receive in ordination, jurisdiction as to venial sins.

Capreolus rests the difference *entirely* on the withdrawal from lawful authority. According to that view, which supposed all spiritual authority to be derived from the Pope, he says[9], "a person is committed to Peter in all things in which he needs to be loosed by another; in these things, *therefore*, he cannot subject himself to another. But from venial sin a man may loose himself by himself without Peter, or any other priest; in like way as to deadly

[6] In iv. Dist. 18. q. 2. Art. 3. ad 3.
[7] Summula v. Absolutio. c. 2. Opusc. t. 2. tr. 7. ad 2.
[8] De Pen. Rel. 5. p. 894.
[9] In iv. Dist. 20. q. 1. ad 3; from De Palude.



sin of which he has once been absolved, unless an ordinance of the Church be opposed; any priest may absolve any one who willeth to confess to him, from any venial sin, or any deadly sin of which he has already been absolved, *because as to these, he is bound to no one.*"

Suarez[1] objects to Soto the declaration of Pope Eugenius IV., which affirms the necessity of jurisdiction, and yet does not limit it to deadly sin. He argues further, that in all confession, the priest must be in some way a judge, and that he must have the power of absolving or no, according to the state of mind of the person confessing. To Caietan he objects, that in no case, jurisdiction can be *simply* given by the submission of another, without any gift from above. To those who held this jurisdiction to be of Divine right, he objects that the universal Church can and does deprive priests of it, when excommunicated[2], or degraded; that it is not founded on St. John xx. (on the ground above-named); that if it be not proved by this, there is no proof of any special gift as to these sins, by Christ; that although their confession is voluntary, yet that, if made, it must be made to one having jurisdiction, in like way as it must be made to a priest, not a layman; that, therefore, there must be some jurisdiction. In this case, the following principles are

[1] Disp. 26. sect. 5.
[2] "And not tolerated." Coninck de Min. Sacr. Pœn. Disp. 8. dub. 2. concl. 3.

admitted: 1. that, if it is free to a person to confess or no, it is free to him to confess to whom he will; 2. that where the law does not require him to confess to a particular priest, he is free to choose any priest; 3. that jurisdiction may exist, where it is given by no law or act of the Church, apart from that of Ordination itself; 4. that the tacit consent of the Church gives it, or continues it. He himself holds that it is given or delegated by tacit consent of the Pope; Gregory de Valentia, that "all[3] priests have it from the Church herself by force of custom." But Vazquez[4] holds, that although a priest, forbidden to use this authority, would sin in exercising it, the absolution would be valid, and agrees with those who hold that the jurisdiction is given by Divine right, since the Church cannot reserve any such sins, nor prohibit any one from receiving absolution from them.

XII. The case of the "ignorance of the priest" is again provided for by a law, bearing the title of Pope Urban II., A.D. 1067; which most authorities hold not to be superseded by the Council of Lateran. Indeed, those who held that the older is modified by the later law, still, for the most part, inconsistently held that a person, according to the Council of Lateran, must "ask," but need not "obtain" leave to confess to another priest in case of the ignorance of him "to whom he had committed himself," or (as it was afterwards commonly understood,) of his

[3] l. c. [4] Qu. 93. dub. 6.



parish priest, since the Canon of Urban II. leaves this case free. This plainly cannot be reconciled with the meaning of the Council, which says, "leave being asked and obtained." The solution therefore seems best, that the Council of Lateran left this case as it was[5].

Medina says[6], that in this case the person has the power of choosing, not simply because "he has a just cause of refusing the ignorant priest, but because *the law* supplies the defect or leave of his own Curate."

Gregory de Valentia says, "If[7] a priest, to whose care any one be otherwise committed, be plainly ignorant, then any other priest can *by law* receive the confession of him who was committed to that ignorant priest. So Pope Urban appointed (de Pœn. d. 6. c. ult.), as John Medina (de Conf. q. 30, 31.) *and others commonly observe;* and they understand it absolutely and generally, although that ignorant priest be a person's own Parish Priest, as the Gloss explains."

And Vazquez, "In[8] other cases, licence is not given by law [jure], and we presuppose that there is no other licence. Therefore, in these it is not law-

[5] Suarez adopts this principle. "Canus, rel. p. 5, admits that a special privilege is here given by human law, but adds that it was revoked by the c. omnis. But not rightly;—for the c. omnis does not recall any licences, if such there were, granted by human law."

[6] Qu. 33. C. [7] In p. 3. Disp. 7. q. 10. P. 2.

[8] Qu. 93. Art. 2. dub. 3. n. 5.

ful to choose a Confessor indifferently. But, in the case of 'ignorance,' it is expressly conceded to any one (de Pœn. dist. 6. c. ult.). For Canus, who says that we must abide by the decision of the Council of Lateran, as though it derogated from that chapter which seemed plainly to allow a person to choose another priest, on account of ignorance in his own, is plainly mistaken." Vazquez, however, himself supposes that the ignorance must be so great, "that for want of knowledge, a confession made with him would be null:" and (2.) that a person, not having jurisdiction as yet by commission, might be chosen, if none of those could be had, who had it, such as the privileged confessors.

Suarez, although he limits the decree (I think) unnaturally, says, "many[9] understand that the faculty of choosing a confessor is given by a special law to each of the faithful, if his own priest be ignorant."

The law itself may more conveniently be considered by itself[10]. It is enough here to notice the admitted principle, that if any one on this ground was free, not to go to him under whom he had placed himself, he was free to go to whom he would.

[9] Disp. 27. s. 2. n. 12. He adds, "Many interpreters of the law have so explained that text with Panormitanus on the c. omnis, and of Theologians P. Lomb. 4 d. 21 fin., as also Bonaventura, in his exposition of the text: and Richard. d. 17. Art. 3. q. 7. Gabriel, ib. q. 2. Art. 3. Palud. q. 3. Antonin. 2 p. tit. 17. c. 4. Adrian de Conf. q. 5. Medina de Conf. q. 37. Navarr. in c. Placuit, n. 150. Sum. c. 9. n. 8.

[10] See below, p. 151, sqq.



And it is the more plain, that no restriction not expressed in the rule is to be introduced in it, because it is itself a restriction on liberty, which existed before. Had, then, any further restriction been intended, it also would have been mentioned.

On these grounds, it became necessary for Roman divines to explain and extend the brief statement of Pope Eugenius IV., which Mr. Allies quotes; that the minister absolving "is a priest, having authority of absolving, either ordinary, or by commission of a superior." Cardinal Caietan[1] observes, that, besides the two obvious modes on the part of the authority lodged beforehand in the Absolver, either by ordinary office, as the Episcopate or Parish, or by commission, as from the Pope, or Bishops, or Curates, or their officials or vicars,—there are five other modes or cases, by which a Priest has one placed under him, so that he can sacramentally absolve him from his sins. Reginald[2] adopts his five cases, but prefixes to them one, which Caietan classes as more directly delegated. His division seems to be the best. A Parish Priest directly delegates his authority, if he gives it to a Priest occupying his place at a Festival, or to a Curate, or allows such Curate or Priest to associate another with him; and in the case of a Curate, this might in some sense be said to be delegation by a Superior. But, although, as stated

[1] Summula v. Absolutio.

[2] Lib. i. c. 7. de jurisdic. deleg.

above, it was held to convey the same "jurisdiction," it is not, in any sense, delegation by a superior to the other priest, when free leave only is given to the penitent to confess to another. The cases, then, as arranged by Reginald, are:

I. "Commission" corresponds with case iv. above; and is the only case in which the jurisdiction *over* the individual is *in any sense* delegated by the person ordinarily possessing it. Yet, even in this, it is not delegated directly to the individual who receives the confession; but it is a simple licence to the person confessing, to go to whom he will. "The consent of the Priest," Suarez says[3], "need not be given in any formal way. It may be given under any words, signs, or writing."

II. "Necessity" is the above case vii. This, it is held, the Church could not rescind; the power of absolving being given, according to some, by the Divine law, according to others, by the law of the Church; yet the Church could not prohibit it, because such an act would be "irrational[4]," and "an intolerable error[5]."

III. "Liberty" is "that[6] whereby a man is in such condition as not to be subjected to any particular person as his own priest."

This comprehends, according to them, case i., the Pope, as being subject to none: case ix. those who

[3] Disp. 26. s. 1. n. 13.
[4] Reg. n. 60. [5] Suarez. Disp. 26. s. 4.
[6] Caietan, l. c. quoted by Reg. l. c. Tertius modus.



never remain in the same place, so that they are not under one more than another; and xi. those who have venial faults only.

IV. "Faculty" is a power given by the law to choose a confessor. This is twofold, according as the law (1.) allows individuals or classes to choose for themselves, as in the case of the higher clergy (case ii.); or, (2.) appoints additional persons or classes of persons, whom all may choose (case vi.). I suppose that permission given by the Pope to whole classes of persons to choose their confessor (case v.) comes under this head; as also the case of the "ignorance" of the confessor (case xii.).

V. "Licence" is either tacit, (case x. or travellers, case ix.) or express. Express is either by giving permission to exercise cure of souls, as to a Curate, or to administer Sacraments.

VI. "Custom" comprehends the cases of the ordinary Clergy (case iii.), or Royal personages (case viii.), those who have no fixed abode (part of ix.). Custom, it was ruled, could not prevail against the will of the Superior. It was interpreted then to be "a witness to the tacit permission of the ordinary authority," and it was held that if this tacit permission was conceded by the higher authority, it "could not be revoked by the lower." "Custom," then, was construed as (case v.) "tacit licence."

The case then is quite clear as to jurisdiction. In whatever way any one might lawfully (legitimè) sub-

mit himself to another priest, that priest had "jurisdiction" with regard to him. The only thing orbidden was to act *against* authority. If the Bishops allowed a custom to spring up, it was valid, even against law, as in the case of priests confessing to one another. It was quite natural, (for it was a law of regenerate nature, a fruit of the love of the Church, adapting itself to different circumstances,) it was quite natural, but very opposed to a stiff theory of jurisdiction, that these exceptions were allowed to continue, or tacitly grow up through custom. It was an unwritten law, deeper than all human law, the law of love written in the heart, which controlled the written law. Kings find it hard to humble themselves. They were allowed to humble themselves before whom they would; they might choose their own confessors, rather than be exposed to neglect it altogether. Priests "blushed[7] to confess to their own prelate;" other means were provided, or they were allowed to confess to one another, notwithstanding contingent evil[8]; travellers became disused to ask leave of their priest before they left home; it was construed into a tacit consent of their

[7] Steph. Langton. Lyndw. de pœn. et rem. c. 1. and Conc. Oxon. A.D. 1222. c. de pœnit. Wilkins, t. i. p. 595.

[8] "It is not very expedient, lest those conscious of the same crimes should defer to one another. For (C. 16. q. 2. c. 1) 'it is the manner of men to reverence him by whose judgment or will they are raised up or put down;' and so penitence would come to be weakened, and grace be through carnal favour." Host. de pœn. et rem. c. cui sit conf. sac. § cui presbyter paroch.



priest, and they were allowed to confess as they needed. In the hour of death, the Church was anxious that there should be no hindrance to the relief of a burthened conscience, and so, if the Parish Priest or even the Bishop were by, the penitent might choose in preference any simple priest.

It would then have been a sufficient answer, that (as I hope to show presently) "custom" allows confession among us to be made to whom we would. Even had the words "or some other" been originally restricted to any class of priests, custom, growing out of the tacit consent of Bishops, not now only, but in other centuries since the Reformation, would have been a sufficient justification. But, according to the law before the Reformation, any one in whose presence the Priest should say, "let any of my parishioners confess to whom he will," "let him come to me or some other," would have been entitled to go to any priest, whether such priest had cure of souls or no. *Now*, besides the leave of the particular priest, they have that of the law itself, which is acknowledged to supersede that of the individual priest. The words which the Church directs a priest to use, are more solemn than if he said them of his own mind. But, if said of his own mind, they would, according to the principles then admitted in the Roman Church, convey authority to any simple priest to receive those confessions; much more when they have the authority of the law also.

This then might, in itself, remove the anxiety

which Mr. Allies' statements have raised. Priests had, before the Reformation, the right of confessing to whom they would; students at Universities were under no proprius sacerdos; all who had leave from their own Parish Priest, whether given individually or generally, might choose their own confessor. Parochial Priests might receive confessions out of their own Diocese, when any had leave by law or custom, or tacit permission, to come to them.

One question only remains, although not raised in this letter, and that relates not to "jurisdiction," but to "qualification." Admitting that it is lawful that any Priest with cure of souls may receive the confessions of those who have leave to come to him, the question might be raised, whether one without cure of souls was qualified, without a licence from the Bishop. This question is almost personal to myself. For most others who have exercised this office have, I believe, had cure of souls. And the question is not whether this ministry may be exercised by those who have cure of souls, towards souls not under their cure. This has been proved. But it is, whether those without cure of souls, may exercise it at all. It would hardly be worth dwelling upon, but that some of those who have gone from us, seem to have been at pains to speak against my acts as irregular, in order to diminish any influence which God may have permitted me to have. I will mention then *in limine*, that they who insist upon the necessity of a licence for those without



cure of souls, admit that graduates in Theology, though not having cure of souls, might, according to the custom antecedent to the Council of Trent, receive confessions without licence from the Bishop.

The question arose out of the privileges given to some of the Monastic Orders, and the subsequent contests between them and the secular Clergy. The doubt was founded in part upon some misapplied statements of Gratian in the Decretals, partly on supposed inconveniences, if the selection of a priest were left indiscriminately to any one who obtained the leave, however unfit he might be to judge.

As to the passages in Gratian, they relate only to the *ordinary* exercise of the pastoral functions by the Monks, as Hostiensis and Medina explain them. Hostiensis[9] says, "What is said by Goffridus and Raymundus, who do not agree that the religious should hear confessions, is no hindrance. For the laws which they allege, are to be understood of religious who wish to usurp parishes without licence of their superior, as the laws themselves imply; or when they wish to hear any one without licence of the judge of the sinner, or when they do this without licence of the Abbot, and under no pressure of necessity, as is implied in 66. q. 1. c. 8, sqq."

The two statements of Gratian are, (1.) "that[1] although Monks, when they receive the presbyterate,

[9] De pœn. et rem. v. cui confit. sit sac. f. 296. Medina, l. c. q. 34. ad 2. Adrian in iv. de sacr. Conf. f. 85.

[1] 16. q. 1. c. 19. Adjicimus.

receive the same priestly powers as others, and may have ecclesiastical benefices, yet they have not the executing of that power, unless they be chosen by the people, and appointed by the Bishop with consent of the Abbot." (2.) "It[2] has been shown sufficiently that to Monks, who have received the honour of the presbyterate, been elected by the people, and instituted by the Bishop, the same is allowed as to other priests." Both clearly relate to benefices, which they could not enter upon, unless elected and instituted; but could if they were. And the ground alleged is, that all receive ordination in the same way. Gratian adds at the close, "Without the licence of Bishops, not only monks, but all Clergy generally, are forbidden to use their powers." But this, as well as the preceding, has reference to every function of the whole clerical office. It would prove too much. The decretal of Pseudo-Isidore, which Gratian quotes[3] in support of this statement, does not allude to this subject at all, and extends to laity as well as Clergy. "All the faithful, and especially all presbyters and deacons, and the rest of the Clergy, must take heed that they do nothing, without the licence of their own Bishop; let not any one of the presbyters, without his command, celebrate masses in his own parish, nor baptize, nor do any thing without his permission." But in these times, before the change introduced by the

[2] Ib. on c. 40. Generaliter.

[3] c. 41. as Clement Ep. 3.



Council of Trent, it was held generally, that no further licence was required for hearing confessions, beyond the licence or leave given to any penitent by any one having authority to give that licence, whether the Pope, or the Bishop, or the Parish Priest.

I would first observe, that this question is quite distinct from that of jurisdiction; it relates to qualification only. Even subsequently to the Council of Trent, Suarez distinguishes clearly between a Bishop's approving, and giving jurisdiction. The Council of Trent required that none should have jurisdiction who was not approved by the Bishop. The approval, *thenceforth*, became essential to a person's having jurisdiction, but even then, it did not convey jurisdiction. It was a restriction on jurisdiction as previously possessed. "The Church," says Suarez[4], "can prescribe the mode of communicating jurisdiction, and lay down any condition, without which, such a person should be incapable of receiving jurisdiction; or, which is the same, without which, the conferring of jurisdiction should be void and of no value. For this is a sort of contract or human action, having a moral effect as to another, which may be made null, unless it take place with the due conditions."

In the case of the Monastic orders, the jurisdiction still came from the Pope, the approval, from the Bishop. The jurisdiction existed, but could no longer be used without the approbation of the

[4] Disp. 28. s. 4. quis sit idoneus min. ex Conc. Trid. n. 14.

Bishop, for the Council of Trent forbade this. The approval was essential to the use of the jurisdiction, but did not convey it. Priests may now be approved, and yet not receive jurisdiction; Henriquez says, "The[5] Bishop *is* wont to approve Priests in various ways. Some secular priests he approves, as qualified to be chosen by others, yet gives them no jurisdiction which may suffice without the delegation of the Parish Priest, &c."

Suarez says, "The[6] Bishop himself may approve, and not delegate jurisdiction. For the concession of jurisdiction is a sort of favour, which a Bishop gives freely; but this approbation is, as it were, an act of justice, *i. e.* a just judgment, whereby one is declared qualified. Whence the Bishop rightly may declare this juridically, and approve, and yet not delegate his jurisdiction to one so approved. He may also simply approve, and yet give jurisdiction only for a time, or during his own life; and then, although the jurisdiction would cease through the death of the Bishop, the approbation would not. Wherefore this approbation seemeth to be nothing else than a sort of public sentence, or authentic declaration of the sufficiency of such a Priest to hear confessions, *which the Council of Trent willed should be* a sort of necessary disposition, that a simple Priest should be proximately capable of jurisdiction,

[5] L. 6. c. 6. quis sit et reputetur idoneus Confessarius juxta Conc. Trid. s. 23. Ref. c. 15.

[6] l. c. n. 22.



or be eligible through privileges." Reginald uses the same topics.

But, further, as to the question of licence or approbation itself, Suarez treats the question at length, and distinguishes between the older law before the Council of Trent, and that enacted by that Council. Having quoted several older authorities, he says[7]:—

"I say first, the Parish Priest, before the Council of Trent, by the force of the common law, could both validly and lawfully commit his jurisdiction to any other Priest who, according to the natural or Divine law, was qualified to administer the sacrament, [*i. e.* as Suarez explains, 'one not specially suspended or prohibited by the Bishop:'] *although he had no other jurisdiction or approbation of the Bishop.* This is proved, because there was power in the party delegating; for this belongs to him by the force of ordinary jurisdiction; and this (as we presuppose) was not tied or hindered: because on the part of the Parish Priest himself, there was no positive law prohibiting that delegation, nay, nor is now, as we shall see below. Again, on the other side, there was capacity in the Priest, *and there was no law specially requiring in him either of the said conditions* [*jurisdiction or Episcopal approbation*], because it cannot be shown in any canon or papal decree, nor does it follow from the nature of the thing. For to him to

[7] Disp. 28. de elig. sac. idon. s. 3. Again, Disp. 27. s. 2. n. 15. "a qualified priest, and *now* approved also by the Bishop."

whom the sheep were committed as their ordinary pastor, could be committed also the care of taking a worthy and sufficient coadjutor, and therefore since it was not prohibited, it was supposed to be given.

"Secondly, standing upon the ancient law, *by a general faculty given to choose a confessor*, any Priest might be chosen, qualified by the Divine law, without any other condition, or *approbation* being required by human law. This is proved on the same ground, that no law can be pointed out, wherein this is prescribed.

"Whence I infer farther, although the faculty was given in these general words, 'a fitting and qualified [idoneo] Priest,' it would not be to be limited or interpreted necessarily of 'a Priest' *declared* by public authority to be 'qualified,' by either of the said ways. For this declaration or limitation too is not contained in the law, nor is it necessary by the force of reason alone, because it may be ascertained sufficiently in other ways that the Priest is qualified, as by experience, or public report, or knowledge, or the testimony of other credible persons. And although it is true that from a general permission so understood, and given to any one of the people, inconvenience might arise, it only follows thence that it belonged to the care of the pastors of the Church, not to grant it without greater definiteness or circumspection."

This, he says, was done by the Council of Trent; and further, that it appears from the very words of the Council, that the law so enacted was *new*. "It is



certain," he says, "after the decree of the Council of Trent, (Sess. 23. c. 15. de ref.) that it doth not suffice that the person of the Priest, to whom jurisdiction is to be delegated in this Court, should have all things required by Divine or natural law to perform this ministry, except he has the special approbation of the Church as to this, decreed by that *new* law." This was, "The Holy Synod decrees that none even of the regulars can hear the confessions of the seculars, even Priests, nor be considered qualified for this, unless, by a parochial benefice, or by the Bishop through examination, (if it shall seem to them to be necessary,) or otherwise, he be judged to be qualified, and obtain the approbation, which is to be given gratis, all privileges and customs whatsoever, even immemorial, notwithstanding."

This decree seems principally to have reference to the long-established custom of the monastic orders. The Council itself bears witness, that there had been "*privileges and customs immemorial*," allowing the "regulars" to hear the confessions of any, without previous approbation by the Bishop.

But Suarez notes that the limitation introduced is new. "That one of these modes [*i. e.* either parochial cure, or direct approbation by the Bishop] should be necessary, is new, and introduced by the Council, as appears by what has been said above, and is indicated in the words of the Council, 'The Holy Synod decrees.'"

From this it appears, (1.) that in Suarez' judgment,

one who had leave to choose to whom to unburden his conscience, might, before the Council of Trent, choose one without cure of souls, and without any approbation of the Bishop; (2.) that whatever inconvenience may occasionally arise if an undiscerning person should mistake the character of any priest, this power was entrusted to persons before the Council of Trent, as it is by the Church of England now; (3.) that the defect, if any, was not absence of jurisdiction, but of qualification; and the object in requiring priests, after the Council of Trent, to receive the approbation of the Bishop, was not to give them any additional jurisdiction, but to secure their having the necessary qualifications. This Suarez says, explicitly:—

"To avoid those dangers, the Council of Trent framed a law, to be explained presently, which its very words will show to be *new*." The Parish Priest did receive jurisdiction over his own flock, but over it only. The ground why, by the Council of Trent, any who had leave not to confess to his own priest, was thereby allowed to go to one having cure of souls, and not to any simple unapproved Priest, was, not that *he* had jurisdiction, and the other not, for he had received jurisdiction over his own flock only; but, that the very fact that he was so entrusted, implied that he was approved by the Bishop as qualified. If he was fit to receive the confessions of his own flock, he was fit to receive those of others. This Suarez says: "Since Bishops



are the principal pastors of souls, rightly is this approbation committed to them. But because cure of souls is committed to the Parish Priest also, by this very office he is enough declared to be sufficient to hear confessions; and therefore, *although he receives jurisdiction only over his own sheep*, yet he is accounted to be approved, so that this jurisdiction *can be delegated* to him whensoever and in what way soever is otherwise lawful."

This opinion, Melchior Canus, who, about the time of the Council of Trent, maintained the opposite side[8], acknowledges to *be the common opinion of the moderns*. He allows that Graduates in Theology may be chosen without such licence, and denies it only to such as are "not approved by the public authority of a degree in Theology, or *at least implicitly* permitted by the Bishop." He separates this question from that of jurisdiction; he does not suppose that this licence gives jurisdiction; for he speaks of a Priest "approved by the Bishop, or his Vicar, although he have none under him, *and altogether have no jurisdiction*." He assumes that there is "a precept," not binding on the penitent but on the priest, "not to hear confessions, if not examined," of which Vazquez says, "how[9] this was so, before the Council of Trent, or where there was such a precept, I see not." There was plainly none. Else, Canus' grounds are entirely founded on the

[8] Relect. de Pœnit. P. vi. p. 951—954.

[9] Q. 93. Art. 1. dub. 5. n. 5.

risk of abuse of such permission. "Among simple Priests, not examined, are many most ignorant, and most profligate." "If the Supreme Pontiff gave a faculty of choosing any Priest, he would thereby make all priests, even the greatest fools [stultissimos], judges in the inward court, which it is most unworthy to ascribe to any except the most pestilent prelates." "Wherefore," he adds, "I hold that if a priest is otherwise *approved* by a Bishop or his Vicar, according to the custom which well-instructed Bishops observe, then, by a licence of choosing a Confessor, whether given by a Parish Priest, or Bishop, or Supreme Pontiff, he may be chosen, *although he have none under him and altogether no jurisdiction.* But if any one be *rejected* by the Bishop, or by the Visitor, as *foolish* and unfit, such an one cannot be chosen by virtue of the clause of choosing a Confessor. And I think the same of him, who is not examined and approved by a prelate according to the form prescribed by law or *by custom.* For the contrary opinion, at least, opens a most wide open door to the destruction of the Christian people, when the most ignorant priests are chosen by a most ignorant people." Again, "By that opinion which we are endeavouring to refute, any common ignorant person of the populace[1] may choose a Confessor at his own pleasure, and so weigh and approve him."

But he was standing against the then current. I

[1] Quilibet idiota et vulgaris homuncio.



will mention some of the writers quoted as authorities.

Stephanus Auffrerius states it to be "commonly held" [communiter servatur[2]] that any priest not having cure of souls may absolve in this case; and this, on the ground alleged by Hostiensis[3], "that from the time that the priest has the power of the keys, he received this power of binding and loosing, in his ordination. But he hath not the exercise, from want of those put under him; whence, from the time that any one may *lawfully* put himself under him, he may exercise his own power towards him." And he lays it down as a principle (from l. i. ff. de judic.) that "the jurisdiction of those who have not actually any placed under them, may be extended."

Adrian [*i. e.* Pope Adrian VI.], in a work written shortly before the Council of Trent, taught that[4] "on the ground of such licence," [to choose a confessor,] "he may choose any Priest indifferently," and that such Priest absolves by his own authority. He alleges as principles admitted by those of "the contrary opinion," that any Priest has jurisdiction towards other Priests; to Bishops and Prelates exempt; also to those at the point of death; as to sins, before confessed, and probably as to venial sins. He alleges also the "common observance and prac-

[2] Ad decision. Capellæ Tholosanæ, q. 222. p. 115.

[3] Summa de Pœn. et Rem. c. igitur. alleging § Ecce sufficienter et cap. Ex authoritate 16. q. 1. [Card.] Panormitanus in Clem. v. 1. de priv. n. 16. follows Hostiensis.

[4] Quæstt. in iv. de sacr. Conf. f. 85.

tice of the people. For by virtue of the faculty of choosing a qualified confessor, *they go indifferently to any Priest.* And certainly, in consecration, the key of power is given to every Priest, which is the power of binding and loosing in the Penitential Court. He has then spiritual jurisdiction, which may suffice for its exercise, if he have but the due matter."

De Palude says, "He[5] who may choose a confessor, may take any Priest indifferently, except that a religious, since he has no choice without his superior, ought not to hear [a confession] without the leave of his superior." This exception related to his character, not as a Priest, but as one bound by a vow of obedience to the superior of his Monastery.

Medina says that "some few [nonnulli] Jurists said, that a person who had licence from a curate to confess to another, whom he would, could not, by virtue of that licence, confess to a simple Priest, unless he had cure of souls." He answers, "It seems that it is to be held *with the Theologians* that any one who has leave to confess to another, may confess to a simple Priest, because Bishops may, (according to Greg. Decr. v. 38. 16.) *as is the common practice and custom,* which is the *best interpreter of laws;* so then one may, who has licence from a curate. For the licence is given in the same tenor to both." He adds: "Jurisdiction in the Penitential Court adds nothing above the power of orders, except the subject matter, towards which the Priest may be able to exercise the power. But this he has by the voluntary subjection

[5] Dist. 16. fin.



whereby the parishioner who hath leave to submit himself to whom he will, willeth to submit himself to him."

Again, he shows that they have just the same jurisdiction as any other Priests, to whom any go, with leave from their own. "It is not true that a simple Priest so chosen, has not at least delegated jurisdiction, consequentially, or mediately, because, in that the Curate gives his parishioner licence to confess to whom he chooses, he, by consequence, puts in his own place the priest so chosen. Else one who had a general licence to choose himself a confessor, whether by law, or Bull, or privilege, could not choose another with cure of souls; for one with cure of souls cannot absolve those placed under another, if he be their ordinary or delegated judge, unless thou say that he is mediately and consequentially delegated, which we too say[6]."

Again, Angelus de Clavasio[7] meets the objections of the same Jurists, as Medina. "3. One is said not to have execution of his orders, who hath not a people placed under him: such as religious, habilitated by their prelates, and all secular Priests, who have not cure of souls." He answers, "The licence to hear [confessions] may well be granted to such [Priests], not only through its being specially com-

[6] l. c. qu. 34. ad 4. "The writers of those glosses," he says again, "were of the opinion from which we, *with the theologians*, recede." Ad 1.

[7] Summa iii. § 4.

mitted to them by those who have actually a cure, but also through a Curate's giving licence generally to those under him, to choose whom they will as a confessor." He adds: "Every Priest, in that he is an ordinary Priest, has jurisdiction; the matter alone is wanting on which it should be exercised, and therefore when it comes to him by such licence given generally, he absolves by his own authority which he has, and which he can exercise when the due matter is offered to him.

Lyndwode[8] (A. D. 1422) quotes the two opposite authorities, Raymundus, A.D. 1230, and [Card.] Hostiensis, A. D. 1250, who was followed by most, afterwards. Of these Hostiensis says, "It sufficeth that a man have licence of his judge, that he may confess to any one specified; nay, or if he have a licence in general, that he may confess to whom he will, or simply that he may confess to another; in these two cases, if he who is under another, goes to one more discreet, whether a religious or other, or (with good reason) to one not so skilful, so he be skilful and of good report, he is safe in confessing, and the other in hearing. But if he have no reason, except that he wishes to hide his sins from his own Priest, or because he despises him, he deceives himself, and ought to repent of this also."

Gregory de Valentia (A.D. 1597) sums up preceding writers[9], "When one under authority hath the power

[8] De pœn. et rem. c. Sacerdos. v. Item nullus. f. 169. v.

[9] He quotes de Palude (4. Dist. 17. qu. 3. Art. 2.) Antoninus



of confessing to another priest, absolutely, 'to whom he will,' *from man*, i. e. from the ordinary Minister, whether the Pontiff, or Bishop, or Parish Priest, this is not to be understood merely that he may, at his option, confess to any other Parish Priest whatever, or to any other whatever set forth by the Bishop for hearing confessions (as Canus thought, l. c.), but that he may *confess altogether* to any priest whatever, who in other respects is 'qualified' [idoneus] for it. *So Theologians commonly* hold. According to which opinion, Religious can be chosen, who are *not peculiarly hindered* by their superiors, so that they cannot validly receive confessions."

Again, Prosper Fagnanus (an eminent Canonist about A.D. 1660) says, that the Lateran Council, by not requiring the licence of the Bishop, in fact left it free. "By[10] that decree [of the Council of Trent] the arrangement of our text [c. omnis of the Lateran Council] *was taken away*, in that part in which it lays down that a stranger priest can hear confession, with the licence of the Parish Priest. For *at this day*, in a priest not a parish priest, such a licence sufficeth not, but the *licence and approbation* of the Bishop is required. Before the Council, there was only one hindrance, that no one could confess to a stranger priest without leave of his own, as appears

[ABp. of Florence] (3. p. tit. 17. c. 7.) Gabriel Biel (Disp. 17. q. 2. Art. 3. dub. 5.) Sylvester (Conf. i. 5.) Joh. Medina, Soto, (Disp. 18. qu. 4. art. 3.)

[10] In c. omnis n. 60. 75. & 61.

from this Decretal. But *at this day* another is added (c. 15. sess. 23. of the C. of Trent), *i. e.* that no one is qualified to hear the confessions of seculars, unless he have a parochial benefice, or be approved by the Bishop."

And to show how entirely this was matter of *positive* law, even after the Council of Trent, this licence of the Bishop was not required to enable the Confessors of the regulars to hear the confessions of those who formed part of their family and lived at their table, but was required for the servants in their monastery.

There is then no reason to think that the state of things among us, just before the Reformation, did not follow the general law, so that leave not to confess to a person's own Priest was freely given; nor does it appear that here, any more than elsewhere, the general word "Priest," was, by any received custom, limited to one having cure of souls or licensed by the Bishop. The rule of Archbishop Reynolds[1], quoted by Mr. Allies, "let no Priest admit the parishioner of another to penance, *save* with the licence of his own presbyter or Bishop," implies that he might, *with* that licence. And it may be said that the Parish Priest required no licence from the Bishop. Hostiensis says expressly, "A[2] Parish Priest, from the time that cure of souls

[1] Lyndw. l. c.

[2] De pœn. et rem. c. cui confit. sit Sacerdoti. f. 296. A contrary opinion had been held by Raymund, "That the Parish



is committed to him by any Bishop, *without other special licence*, hath power to hear the confessions of his own parishioners, to excommunicate and absolve." Nor did he, according to Suarez[3], *even after the Council of Trent, require any further approbation, in order to receive confessions out of his own diocese.*

Let me observe again, this question turns entirely, not on jurisdiction, but on his being *known* to have the qualifications requisite. Some thought, that *according to that Council*, it was intended that a Priest with cure of souls, was only to hear confessions within his own diocese, *i. e.* that since his being entrusted with cure of souls was an approbation by the Bishop who gave him that cure, not by others, he therefore was "approved" for his own diocese, not for others.

Suarez, however, says, "I hold that one so beneficed, according to the intention of the Council, is to be accounted simply qualified, and for any place whatever, so that he is every where proximately capable of jurisdiction, if it be conferred on him by one who can delegate it, either by medium of a Bull, or by some like privilege of choosing a Confessor. Henricus relates that this was the meaning of some most grave prelates, present at the Council,

Priest cannot hear confessions, unless power be given him by the Bishop," "which," Goffridus de Trano says, "approveth itself not to me; for parishes are distinct, just as dioceses." L. v. de pœn. et rem.

[3] Disp. 28. s. 4. n. 18.

and of all the Theologians and Jurists of Salamanca, and I also am clear as to it." And this on the ground, (1.) that no restriction was to be added to the words of the Council; (2.) that the Council *in this* made no new law, but *retained the old;* (3.) if the priest could not be chosen out of his own diocese, he could not, out of his own parish (which he had shown to be false).

Suarez puts the objection, that "one entrusted with cure of souls receives thereby the approval of his own Bishop, but not of others." He answers, "By virtue of the benefice he appears to be approved for such a *place* or *parish*, and yet by virtue of the Council, that approbation is accounted sufficient for other parishes, because a public minister, and approved by virtue of his office, ought to be accounted by the Church *simply* capable of being chosen; therefore."

Mr. Allies' solution of the words in our Prayer Book "me or some other," viz. that "it would of necessity be a priest, who had been appointed by the Bishop for that Diocese or district," does not represent, according to Suarez, the Roman discipline even after the Council of Trent. For even then, one who obtained leave from "his own priest" was not so limited, but might go to any other who had cure of souls. And even this limitation of having cure of souls, had no reference whatever to jurisdiction. His having jurisdiction over his own people, did not give him any jurisdiction over others. Rather, his having jurisdiction over these, excludes, as is



self-evident, and as Suarez implies, his having in the same sense, any jurisdiction over others. It was simply a testimonial of his qualifications.

But, before the Council of Trent, *i. e.* when the words "or some other" were first introduced into our Office for the Communion, they would have been understood as unrestricted, because, in practice, one who obtained leave not to confess to his own priest, was, "according to the Theologians," not restricted. And Suarez expressly meets the objection, that all people would not be judges who would be "qualified" priests and who not, by saying, "people might know it by experience, or public report, or notice, or testimony." Any how, he says, that such was the case before the Council of Trent; so that our people, in being allowed to choose for themselves, if they wish, "some other discreet and learned Priest," are, so far, in the same condition as they were before the Reformation, when they might, if they had leave (which so many thousands had), choose to themselves an "idoneus sacerdos."

II. According, then, to the principles immediately antecedent to the Reformation, a parishioner before whom the Parish Priest said from the Altar, "If[4] there be any of you whose conscience is troubled and grieved in any thing, lacking comfort or counsel, let him come to me, or to some other discreet and learned Priest, taught in the law of God, and confess and open his sin and grief secretly,"

[4] Exhortation in the Order for Communion, A. D. 1548.

would be entitled to go to whom he willed. And this permission of his own Priest, thus given, was understood by the principle of the Church then and since, to authorize the acts of the other. But besides this, even in 1548, the Church in England had made a great change affecting the matter of jurisdiction, by going back to the Pœnitentiale of Theodore, when "some confessed their sins to God alone, some to the priests; and both with great fruit within the Holy Church." For the very principle of apportioned jurisdiction which Mr. Allies speaks of, implies that all the members of the Church are subject to some one to whom they ought to confess their sins. This was appointed by the Council of Lateran, which he quotes: "Let every one of either sex, after he shall have arrived at years of discretion, faithfully confess all his sins to his own priest, at least once in the year, and study to fulfil the penance enjoined to him." The rule that he should confess to his own priest involved a corresponding rule that he was not to confess to another priest without leave. The Western Church then assigned each to a certain priest, to whom it imposed upon him as a duty to confess his sins. It placed each under a certain jurisdiction. But when the Church of England again left it at the option of her members to confess or no, such jurisdiction ceased. That jurisdiction lay in the power to compel confession and refuse absolution, at the discretion of the priest, if the person confessing was judged impenitent, and so to



exclude him from Holy Communion. The Church of England has returned to the same state as in the time of St. Chrysostom or St. Augustine, "when many were corrected, as Peter; many were endured, as Judas; many not known, until the Lord come."

Since, then, the people were no longer obliged to "confess to their own Priest," they remained indeed under his pastoral care, but were, *in this respect*[5], no longer under his *jurisdiction;* and, consequently, his jurisdiction was not invaded by their going to any other Priest. The two parts of the system, then, in this first book, agreed together. It left people at liberty to "use the auricular and secret confession to the priest," or to be satisfied with "the humble confession to God;" and so doing, it left them free to go to any Priest they would.

It is a maxim in the Roman Church also, "Whoso is not placed under any definite priest, and is in his own power, may confess to whom he will."

"Any one in that which *is in his own power*,

[5] Suarez makes the same distinction as to those who in the Roman Church have received the privilege of choosing their own Confessor. "It is one thing to have the power of choosing a Confessor, another to be taken altogether out of the care and jurisdiction of a person's own pastor. For although the faithful may by a Bull be able to choose a confessor, yet they do not therefore cease to have pastors and Parish Priests of their own. For these retain their ordinary jurisdiction; and, in the use of other Sacraments, and in other things, which belong to the pastoral office, the same subjection and subordination." Disp. 25. de Min. Ord. Conf. fin.

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whenever namely *he is bound to no others, may place himself under whom he will.*"

You will observe, too, that the Church throughout speaks of certain qualifications of the priest, that he should be "discreet and learned," and it does not say any thing about his appointment. She retained these words unchanged among all other changes. Surely, according to any principle of interpretation, when the Church speaks of certain qualities, and uses no other limitation, no one has a right to restrain them, in a way in which the Church has not restrained them. The Council of Lateran, meaning to limit the people to their own priest, enjoins every priest to be "discretus et cautus," but requires that the people should have leave from their own priest to go to any other; otherwise "he could have no power to absolve or to bind him." The Church of England retained the directions as to the qualifications of the priest, but gave her children leave to go to whom they willed, having placed them under no "jurisdiction."

It is inconceivable that she should in a general exhortation have told them so broadly, "let him come to me, or *to some* other discreet and learned priest, taught in the law of God," if she had meant only to allow them to go to a certain person or persons, "extraordinary confessors." She warns them not to trifle in a matter concerning their souls; not to go to a physician who could not heal them, or would heal wounds lightly. Some such



there always notoriously are. Others are "had in reputation among the people." People may be tempted to choose those who would be easy with them. It is not, then, an idle warning to bid them choose such as, in common report, are "discreet and learned." But as to these qualifications also a practical change had occurred before this time. The questions as to the "simplex sacerdos," and the laws referred to in them, all related to the monks. But these had, before the Reformation, been scattered by the wanton rapine of Henry VIII. The question was not as to jurisdiction, but as to qualification. Learning was not the object of the monastic orders, much as we are indebted to some orders in all spiritual learning. There would be many Priests in these orders without knowledge adequate to receive confessions; for knowledge was not their object.

After the suppression of these orders by the iron hand of Henry VIII., the "simplex sacerdos," or priest without cure of souls, was among us to be found only in cathedral or collegiate bodies, the members of which, being mostly graduates of theology, were held, as I said, even by the most rigid, to require no licence. In fact, the chief learning in our Church, since the Reformation, has been in those bodies.

The laws which were interpreted as requiring the licence, applied only to bodies which had ceased to be. Since then the licence was only a testimony to qualification: it requires some proof that they were ever

meant to extend to bodies, who were possessed of those qualifications more than others. It seems a paradox, that when all the Parochial Clergy were accounted competent to discharge this office (for the very force of the words, "let him come unto *me*, or &c." implies this), the Clergy of the Universities should not have been accounted "qualified." For the licence, we have seen, was only a public approbation that they were "discreet and learned." It conferred no powers; it only made a person eligible for the office. In the absence of any indication of this in the Prayer Book itself, or any subsequent book, or any account that such licence was ever given by our Bishops since the Reformation, the words "some other" must be taken in their broad, natural sense. The words must mean what in their natural sense they mean, not what any one may suppose they *ought* to have been. If the Church has put no limitation upon them, others cannot legitimately.

It is a maxim in the Church that "Favours[6] are to be enlarged." A grant in a person's favour is not to be restrained by any limitation, not expressed in the grant itself. A like attempt was made to limit the choice of one permitted by the law, for ignorance of his own priest, to confess to another. Suarez says, "Some[7] say, if there be a qualified priest, having elsewhere jurisdiction in this court, although not

[6] Favores sunt ampliandi.

[7] Disp. 27. s. 2. n. 18.



towards their parishioners, he is to be chosen, *e. g.* the Incumbent of another Church, rather than a simple Priest; and that the simple priest is only to be chosen, when he is qualified, and no other is at hand who has jurisdiction." Suarez answers, "The jurisdiction of a priest, if it be not towards the penitent himself, is, in itself, irrelevant to this judgment. So then, unless by some special law, this was laid down as a necessary condition in choosing a priest, there is no reason why it should be required. But here there is no law requiring such a condition."

But, besides this, there are some indirect and one distinct intimation, that Cranmer did not mean to impose any restrictions. In the Articles of 1536, the "Institution of a Christian Man," and the "Necessary Erudition," although they have, severally, chapters on the "Sacrament of Penance," there is no mention whatever of the subject of jurisdiction. It is some indication of the meaning of Cranmer, that the authority is said to be vested in the priest, without any thing being said as to the question of the "proprius sacerdos," commonly treated of since the Council of Lateran. But in the Catechism published by him, and which he says "I wrot," the choice is distinctly left free. "God[8] dothe not speake to us with a voyce soundynge out of heaven. But He hath given the kayes of the kingdom of heaven, and the authoritie to forgyve synne, to the ministers of the

[8] Cranmer's Catechism, p. 202.

Churche. Wherefore let him that is a sinner go *to one of theim*, let him knowledge and confesse his synne, and praye him that according to God's commaundemente, he will gyve him absolution, and comforte him with the word of grace and forgiveness of his synnes. And when the minister dothe so, then I ought stedfastly to believe that my synnes are truly forgiven me in heaven." "One of theim" in the Catechism corresponds with "me or some other" in the exhortation.

In the Article "on Penitence" among Archbishop Cranmer's papers[9], and corrected by him, the doctrine of penitence, as a remedy for sin after Baptism, is set forth; "the auricular confession" in private to the ministers of the Church, is said to be very useful and most highly necessary. It is declared that in "private absolution the priest has power to absolve one confessing, from all his sins, even those which are wont to be called 'reserved cases;' only that for manifest crimes (if he be brought to justice), he is subject to public judgments."

Besides this, the remission of sins, there are, it is said, "other advantages of secret confession, one of which is that unlearned and unskilful men can never be [more conveniently] or better instructed as to Christian doctine than in confession [if they but gain (nacti fuerint) a learned and pious confessor"]. The words in brackets are Cranmer's suggestions,

[9] Art. 8. Cranmer's Works, t. iv. p. 281—3. ed. Jenkyns.



which were adopted by others, whoever these were. Cranmer insists on certain qualities in the confessor, makes no mention of any restriction, and uses a word most naturally understood of the penitent's obtaining a confessor for himself.

III. But, surely, it is plainly and entirely wrong to bind down the meaning of a practical direction, spoken to each of us, whenever we come to Holy Communion, to a possible limitation which some think might have been true in 1548.

It surely is a plain principle, that a practical direction of the Church, renewed at different intervals, must be interpreted with reference to the circumstances under which that direction can be carried out. A practical direction *renewed*, is not like even a practical direction enacted once for all. When the Church renews a direction, she must mean it to be carried out. And if there is only one way in which it can be carried out, she must mean it to be carried out in that. She cannot mean a practical earnest direction which she gives, to be restrained by limitations, unexpressed and impossible.

Now this direction, that persons troubled in conscience were to go either to the Parish Priest, "or some other discreet and learned minister," was renewed in 1549, the date of the first book in Edward VI.'s reign, and in 1552 (as Mr. Allies first wrote), the date of the second; in 1560, in Queen Elizabeth's reign; in 1604, the Hampton Court Conference; and in 1661, the Savoy Conference.

The Prayer Book having been under review at those times, and altered in those things which it was then thought expedient to alter, what remained was, at those several times, re-enacted. The very words which he quotes of our Prayer Book are not those of 1548, the date which he fixes; nor of 1552, exactly.

The words were under consideration in 1552, for the context was then considerably altered. Four years had elapsed. But Cranmer retained the words "*some other* discreet and learned."

Again, at the revision of the Prayer Book, after it had been set aside in Mary's reign, it was considered by other persons; yet the words were retained. We know well the appointments in Queen Elizabeth's reign, and that there were no "Penitentiary Priests appointed." The word "some other," then, cannot have meant "one appointed by the Bishop for that diocese or district." We should have known also, had licences to hear confessions been granted. It was not necessary, according to Roman writers, or became so only by law, not in force in England. It may not be assumed without proof.

Again, one alteration in this very exhortation, made after 1552, is not verbal; but the very fact of any, even verbal alteration, however slight, would show that it was re-considered and re-appointed. It is notorious that the Office for Holy Communion was under consideration and in part altered back in 1560; but this direction remained as appointed in 1552. Its present form was adopted after the Savoy Conference. It first appears in 1662. The alteration is but slight; but the intention is plain, to direct the mind of Churchmen the more to absolution. In the second book under Edward VI., after the words "open his grief," it proceeds "that [he may receive such ghostly counsel, advice, and comfort, as his conscience may be relieved, and that] by the ministry of God's word, he may receive [comfort and] the benefit of absolution[1], to the quieting of his conscience, and avoiding of all scruple and doubtfulness." Since the Savoy Conference, the words in [ ] have been omitted; and after the word "absolution" is inserted "with ghostly advice and counsel." The change is slight, but it shows that the clause was under consideration then, and re-enacted. As far as it goes, by omitting the word "comfort," and the change of order, it makes the "benefit of absolution" the one object of the application, and "the ghostly advice and comfort" subordinate to it.

Yet confession was used in the earlier times also since the Reformation. It is implied in the language of Bishop Andrewes[2]. Mr. Allies mentions the instance of Hooker and Saravia. Now these were priests. They clearly had no "jurisdiction"

[1] Mr. Maskell (Doctrine of Abs. p. 131) notices that the words "benefit of Absolution" are used by Bishop Bonner in his Visitation Articles in Q. Mary's reign. Art. xx. Wilkins iv. p. 106. They frequently occur in the older Canons. See e. g. p. 41, 42.

[2] See Entire Absolution of the Penitent, Serm. ii. p. 10.

over one another in that narrower sense, nor did they receive any. Yet surely they understood what the Church, by her then recent regulations, meant for her children. They used confession to one another, by the common custom of their Church, before the Council of Trent.

Again, the Canon of 1604, by prohibiting (as did the Council of Lateran) any priest from "revealing crimes committed to his trust or secrecy by any who should confess his secret and hidden sins to the minister," proves the practice to have been common then. Canons are made with reference to existing practice.

An incidental notice of the recognition of auricular confession in the English Church at this time, comes from an unexpected quarter. Panzani, an Oratorian, was sent by the Pope to "pacify[3] the dissensions between the secular and regular Clergy, respecting the appointment of a Bishop; but still to discover, if possible, his Majesty's sentiments on that point, and his general views respecting the Catholics."

In his report he gives an account of the state of religion in the English Church also, and says on this point, "the practice of auricular confession is praised." He seems to be speaking especially, perhaps, of "public sermons before the King and Court."

[3] His account is dated 1627: see Butler, Hist. Mem. vol. ii. p. 339.



But fuller and directer evidence as to the meaning of the words "and some other," is given by Visitation Articles, from 1619 to 1679, founded on the Canon of 1604.

The Visitation Articles of Bishop Overall, 1619, Bishop Andrewes, 1629, Montague, 1638, Wren, 1662, Gunning, 1679 (and there are others[4]), are cast in the same mould, and are founded on the Exhortation in the Communion Office, and the Canons of 1604. They inquire, 1. as to the persons excommunicated, and of their obtaining their absolution; 2. Whether the minister exhorteth those troubled or disquieted to open their griefs, that they may by the minister receive "the benefit of absolution;" 3. Whether the minister have revealed any crimes or

[4] Those by Juxon, Bishop of London, 1640, and Fuller, Bishop of Lincoln, 1668, inquire "whether the minister exhorts the sick, and move him, and that most earnestly, to liberalitie towards the poor, and to unburden his conscience; whether the priest thereupon give him absolution according to the form prescribed; and whether that they had ever heard that the minister hath revealed and made known to any person or persons whatsoever, any crime or offence committed to his trust and secrecy, either in case of such extremity, or *any other case whatsoever;* except, &c. . . . ." These are indications of confession being recommended by Bishops, and of its practice; and imply that it was not confined to the sick bed, but do not directly bear on the words "or some other." The Articles of R. Pory, Archdeacon of Middlesex, 1662, agree with these. Mr. Maskell, Doctrine of Absolution, c. 7, p. 137, mentions some Articles of the Diocese of Peterborough, 1636, as agreeing with those in the text, with which I am unacquainted.

offences, so committed to his trust and secrecy, contrary to the 113th Canon.

Bishop Overall, Bishop Andrewes, and Bishop Wren's inquiries are in the same words.

Bishop Montague has a separate article on the visitation of the sick, and in other respects uses language of his own:—

"Doth he comfort him as concerning his soul's health, his state to Godward? doth he, upon hearing of his confession, which he shall persuade him to make, absolve him from his sins, settle his faith, affiance, and confidence in God? and hath he at any time discovered any part of his confession?" (Visitation of the Sick, tit. 6. § 18.)

Again, "Tit. 7. Concerning the Sacrament of the Lord's Supper."

§ 2. "Is any public, notorious, scandalous offender admitted thereto, without satisfaction made unto the Church, reconcilement with enemies, confession of his faults, and promise made of amendment?"

§ 3. "To which end and intent doth the minister admonish his parishioners to conform themselves, that they receive not their own damnation, as not discerning the Lord's Body?"

§ 4. "Doth he especially exhort them to make confession of their sins to himself, or some other learned, grave, and discreet minister, especially in Lent, against that holy time of Easter, that they



may receive comfort and absolution, so to become worthy receivers of such sacred mysteries?"

Bishop Wren a little varies the question as to the revelation of sins confessed.

Bishop Gunning asks:

"If any person sick or in health (especially before receiving Holy Communion), finding his conscience troubled with any weighty matter, doth for the quieting thereof, and for further comfort and counsel, unburden his conscience to his priest or minister, doth then the said Priest or Minister, upon special confession of his sins made, together with fruits meet for repentance having been performed (to both which also he is by the Minister to be invited), upon his repentance administer to him absolution, together with ghostly counsel and advice; and have you heard that the said Priest or Minister hath revealed or made known, at any time, to any person whatsoever, directly or indirectly, any crime or offence confessed to him in secret by any such penitents (except[5] such crimes as by the laws endanger his life)?"—(Can. 113.)

Here we have Bishops applying this direction of the Prayer Book. We know that there were no priests specially appointed for "that diocese or district." Yet the Bishops, using the words of the exhortation, inquire whether the minister exhorted his people to resort

[5] The same exception occurs, as Heylin notices, "in the readmission of the Jesuits into the University of Paris." (Theol. Vet. p. 486, quoting Contin. of the Fr. History, p. 30.)

to him, *or some other learned minister*, and open his grief, that he may receive the benefit of absolution. The Bishops take the words "let him come to me, or to some other," &c. in their plain natural sense, applying them to every parish in their diocese in which they knew that they had appointed no persons with especial authority to this end. They thus show their belief that the Church did not restrain the power of the keys entrusted to the Priest, to the parish wherein his ministrations lay, provided that others sought him, not he sought others. The only limitation is, that the person who could not "quiet his conscience" should "come to him."

Again the Church of England having given this freedom to her children to choose whom they would, for an office requiring such especial tenderness and discretion, no where restrains the Priest. There are Canons of 1604 prohibiting Priests from exercising certain of their functions in ways tending to irregularity. They are forbidden to preach and administer the Communion in private houses (except in certain cases), to appoint public or private fasts, or exorcise, except by authority. Nay, nearer still, parishioners are expressly forbidden to refuse[6] "to have their children baptized by a Minister, that is no Preacher, and to receive the Holy Communion at his hands in the same respect, as though the virtue of those sacraments did depend upon his ability to preach;"

[6] Can. 57.



and all Ministers are forbidden to "receive to the Communion any such persons which are not of his own Church and parish, or to baptize any of their children, thereby strengthening them in their said errors." "Excommunication" is the punishment for the laity who so offend; "suspension" for the minister who receives them.

But there is no restriction whatever on the plain meaning of the direction to those who could not quiet their consciences, to go "to some other discreet and learned Minister," or restraining these from ministering to them, when they should *come* for the benefit of absolution. The words do restrain us in one point, that we are not to draw away others to ourselves, as was done in the contests of old between the regular and secular Clergy. We are not to obtrude, nor to offer, our services; not to set up ourselves as guides, or depreciate others; we are to be passive, ready to minister to any who "come" to us, but not to cause confusion and heart-burning by intruding, through any act or word of ours, into the ministry of others.

In a word, the Church of England, in that she bids each of her ministers exhort his parishioners to come unto him, or to "some other," leads them to think of him as the most natural person to whom to go; but if there be any reason why, for an office in which the Church would wish to deal so tenderly, they should prefer "some other," she gives them leave to go.

The Bishops at the Savoy Conference had the other part of the power of the keys, excommunication, before them. They added to the Rubric about repelling persons from Holy Communion, if notorious evil livers, or in malice. And lest the Parish Priest should act arbitrarily in this, they provided that if he so repelled any, he should give an account to the Ordinary within fourteen days at furthest. Yet though changing this, and restricting the Parish Priest from virtually excommunicating, and having at the same time this exhortation under their consideration, in that they altered it slightly, and brought out the benefits of Absolution a little more prominently, they retained the words "some other discreet and learned Minister," when they could not by any possibility be understood, except as leaving it wholly to the option of each person to choose in whom he could most confide the sorrows of his soul.

The Priests of the Church of England are plainly under no restriction; for there is absolutely no mention of us or of our confessions. It is to me an absolute paradox to say that the Church of England meant to put a restraint upon the people which she does not put upon us, when she no where expresses it.

This is decisive as to the English Church. The words in her exhortation are living words; they are an actual reality; they are renewed, whenever they are pronounced; they speak, whenever they are read; they have spoken to thousands and tens of



thousands of broken, anxious, burthened, hearts; they are the voice of the Church of England, and of God through her, speaking to people's consciences, and they were heard and understood. As you have often heard me say, and felt yourself, this revival of Confession was not the doing of man but of God. They whose hearts were oppressed by the memory of past sin, sought those whom God appointed to be physicians of souls, and to whom the words had been said, "Whose sins ye remit, they are remitted to them." They understood the Church to tell them in plain words, to tell them to go either to their Parish Priests, or to whomsoever else they could best bear to lay "open their griefs," the very inmost, tenderest, recesses of their soul.

Surely the concurrent interpretation which so many thousands have put upon these words, is some indication what the Church means by them.

But indeed, if persons would think a little, the Church can mean nothing else by them. She cannot, in so solemn a matter, be using unmeaning words; yet, of course, they would be utterly unmeaning, if "some other discreet and learned Minister" meant no one, but some Priests whom the Bishop might have sanctioned if he would.

"With us," says Dean Comber, "it [confession] is restored to its Primitive use, for we direct all men always to confess to God; but some also to confess their faults and reveal their doubts to the Priest, especially in these three cases; (1.) When we are

disquieted with the guilt of some sin already committed; or (2.) when we cannot conquer some lust or passion; or (3.) when we are afflicted with any intricate scruples, particularly whether we may not be fit to receive this blessed Sacrament or no. If any of these be our case, then first we must choose prudently, preferring our own Minister, if he be tolerably fitted, or else we may elect another that is prudent and pious, learned and judicious; one who may manage this weighty concern gravely and privately, and dispatch it wisely and fully to our satisfaction."

You will observe, too, that eminent Bishops, whose works have been popular among us, and who knew what practice they sanctioned, assume that the Church intended to leave that freedom. Bishop (then Dr.) Cosin, A.D. 1627, was commissioned by Bishop White to draw up his manual; when drawn up, Mountain, Bishop of London, put the imprimatur with his own hand. It is said to have been held in most esteem next to the Prayer Book. Among "the precepts of the Church," he sets down[7]: "To receive the Blessed Sacrament of the Body and Blood of Christ with frequent devotion, and three times a year at least, of which times Easter to be always one. And for better preparation thereunto, as occasion is, to disburthen and quiet our

[7] He quotes, in the margin, besides the Exhortation, Bishop Overall's and Bishop Andrewes' Articles in the Visitation of their dioceses, showing that he understood them, as only they can be understood.



consciences of those sins that may grieve us, or scruples that may trouble us, to *a* learned and discreet Priest, and from him to receive advice, and the benefit of absolution."

In like way, Bishop Sparrow says: "He that would be sure of pardon, *let him seek out a priest*, and make his humble confession to him; for God, who alone hath the prime and original right of forgiving sins, hath delegated the priests His judges here on earth, and given them the power of absolution; so that they can, in His Name, forgive the sins of those that humbly confess unto them[8]."

And Bishop Taylor, A.D. 1659, in a book which to this day is still one of the most popular of our religious books[9]: "Let the minister of religion be sent to, not only against the agony of death, but be advised with in the whole conduct of the sickness." "When the man is deadly sick, he cannot be called upon to confess his sins, and he is not able to remember them." "St. James advises, that when a man is sick, he should send for the elders." "Whether they be many or few that are sent to the sick person, let the curate of his parish, *or his own confessor*, be amongst them; that is, let him not be wholly advised by strangers, who know not his par-

[8] Sermon before the University of Cambridge, A.D. 1637, appended to the Rationale.

[9] "Holy Dying," c. 5. § 2. t. iv. p. 507. ed. Heber. The 19th edition was published forty-four years afterwards, in 1703. Biog. Brit.

ticular necessities; but he that is the ordinary judge cannot safely be passed by in his extraordinary necessity, which in so great portions depends upon his whole life past; and it is a matter of suspicion, when we decline his judgment that knows us best, and with whom we formerly did converse, *either by choice*, or by law, *by private election or public constitution*."

Where, you will observe, Bishop Taylor presupposes that people had their "own confessors," and this by their own free choice, while he implies that the Church *might*, "by public constitution," appoint such persons if she willed; and perhaps he might think that the word "*me*," coming before "*some other*," carries with it a certain preference of the Parish Priest himself.

In the "Holy Living," he speaks in the same way: "In all which circumstances, because we may be very much helped, if we take in the assistance of a spiritual guide; therefore the Church of God, in all ages, hath commended, and in most ages enjoined, that we confess our sins, and discover the state and condition of our souls, to such a person, whom *we or our superiors* judge fit to help us in such needs[1]."

And in the "Golden Grove" (of which eighteen editions were printed in twenty-five years after his death), "Confess your sins often, hear the word of God, make religion the business of your life, your

[1] § 9. Of Repentance. p. 259. ed. Heber.



study, and chiefest care; and be sure that in all things *a* spiritual guide take you by the hand[2]."

It may be observed, too, how familiarly Bishop Taylor[3] speaks of "guides of souls," in connexion with confession; or how Evelyn[4] speaks of his child's letter to a Divine, to whom she writes, that he would "be her ghostly father," and relates how he himself had delayed recommending one to her, "seeing her apt to be scrupulous, and knowing the great innocency and integrity of her life."

In like way, the Bishop, (whether Bishop Taylor[5] himself or Bishop Duppa,) who wrote the "Guide for the Penitent" (a work as popular as the "Golden Grove," and, since Bishop Taylor's decease, always united with it): "That, besides this examination of your conscience (which may be done in secret between God and your own soul), there is great use of holy confession; which, though it be not generally in all cases, and peremptorily commanded, as if without it no salvation could possibly be had; yet *you are advised by the Church*, under whose discipline you live, that before you are to receive the Holy Sacrament, or when you are visited with any dangerous sickness, if you find any one particular sin, or more, that lies heavy upon you, to disburden yourself of it into the bosom *of your confessor*, who not only stands

[2] Agenda, No. 32.

[3] Devout Communicant, c. 5. § 6. So also Kettlewell, Guide to the Penitent.

[4] Diary, March 16, 1684.

[5] See my Notice prefixed to the edition of 1843.

between God and you to pray for you, but hath the power of the keys committed to him, upon your true repentance, to absolve you in Christ's Name from those sins which you have confessed to Him."

"That, *having made choice of such a confessor* who is every way qualified that you may trust your soul with him, you are advised plainly and sincerely to open your heart to him." "*That for the frequency of doing this, you are to consult with your own necessities.*"

But indeed Mr. Allies entirely concedes this point. For he says[6], "When in the times of James and Charles, our Divines had risen to higher notions of the Church and its functions, they supposed this power of inward spiritual jurisdiction to reside in Bishops and priests." But since this was so, then, when they used the words "or some other," the less can there be reason for restraining the force of that phrase. There is no indication that they thought that either the spiritual good of individuals, or the good order of the Church, required any such restriction. And, according to this statement, they could not have held it to be required for the right use of the power of the keys.

I have not examined the case in which Collier absolved publicly two persons at the place of execution. The objection raised against that absolution is, that he is supposed not to have moved[7] them *at that time* to make a special confession of their

[6] Royal Suprem. p. 59.

[7] Wilkins, iv. p. 627.



sins, at least of those sins for which they were condemned. And on the other side, here were persons absolved that did not humbly desire absolution, as feeling any such "weighty matter to trouble their conscience." The objection is, that there is supposed to have been, at all events, one very grievous sin which they did not confess as a sin, but are alleged to have gloried in[8]. The charge brought against Collier[9] is, that either he did not know the state of their souls, and then he could not "without manifest transgression of the Church's order, as well as the profane abuse of the power Christ has left with His ministers, absolve them from all their sins;" or if he did, that, by absolving them, he declared the part which they had taken against William not to be sin.

We have then the implied statement of the fourteen Bishops who signed the censure of Collier, (all who were within reach at the time, and the majority of the whole,) that if the persons absolved had confessed all their sins, and humbly asked for absolution, "the Church's order" would not have been transgressed.

To sum up this evidence briefly.

1. The relation of the flock to the parish priest *in respect to confession* was changed when it was again

[8] It appears from this account that they were not implicated in the sin of attempting to assassinate William III.; but one knew of the intention. What they gloried in, seems to have been the attempt to restore King James to the throne.

[9] Collier alone seems to have been their confessor; the other two priests appear to have expressed their concurrence only.

left free to each individual, and a matter of his own conscience personally, whether he should confess or no. He was no longer placed under the jurisdiction of the Parish Priest in this respect; and so, by confessing to another, he did not (as he would have done before, when it was compulsory) violate any relation towards the Parish Priest.

2. Together with this change, there occurs an invitation to those who cannot otherwise quiet their conscience, to unburthen it with a view to the benefit of Absolution. In this invitation, each Parish Priest is directed by the Church to say, "Let him come to me, or to some other discreet and learned Minister of God's Word," thereby formally releasing them, by direction of the Church, from any necessity of coming to himself, and in broad absolute terms bidding them, if they desired it, to go to *some other*.

3. Leave so given by the Parish Priest, was contemplated, before the Reformation, as amply sufficient to entitle the parishioner to go to any other Priest, and convey to that Priest (whosoever he might be) jurisdiction to receive the confession, and absolve the penitent.

4. Priests, having cure of souls, did not, before the Reformation, require any licence from any Bishop to receive in his Diocese the confession of any one who came with leave from his Parish Priest, whether given to him individually, or generally to the whole parish. The best authorities before the Reformation



held that Monks, being Priests, though without cure of souls, equally did not require any licence.

5. The laws, which were supposed by some to lay restriction on those without cure of souls, related solely to the Monks, and the restriction was thought to be founded on their duties, as Monks.

6. The objection, as far as there was any, related not to their not having cure of souls, or jurisdiction, but to the risk of their not being qualified for the office, like the Parish Priest. On this ground, graduates of Theology, being regarded as qualified, were accounted by all to require no licence. In the Church of England since the Reformation, this doubt would not apply to Priests not having cure of souls, as belonging to the bodies who have had most learning.

7. No proof is, or can be, adduced, of any restriction having been ever placed upon this concession. But it is a received maxim in the law of the Church, that concessions are not to be restricted beyond their plain meaning; and custom is accounted to justify any practice which is not directly against positive law, nor formally revoked by the Bishop.

8. The Church of England, while making other regulations to prevent contempt of the Parish Priest, or irregular exercise of the Priestly Office, never put any limitation upon this, nor did she ever appoint, or show any indication of a wish to appoint, nor did her Bishops ever recommend, any definite

persons to hear confessions, so that the words "or some other" should be in any way restrained,

9. The Service in which the words "or some other" occur has been five times renewed; three times, at least, it has been under deliberate consideration; alterations have twice been made in the exhortation itself, in 1552 and 1661; yet these words have been deliberately retained, when they could have no meaning at all, except in their unconditional sense, as leaving each individual entirely free to whom to unburthen his conscience.

10. Bishops, in their Visitation Articles, have expressly quoted these words, in reference to Confession, when they could not be understood in any limited sense. Other Bishops, whose works have ever been received in our Church, speak of the choice as being left free to individuals.

11. The Canons of 1604 imply the existence of the habit of confession, but impose no restriction. Yet, if confession was contemplated or used at all, the words "or some other" must, century after century, have been taken in their unrestrained sense, since there was no other sense in which they could be taken. No persons being appointed by the Bishops to receive confessions, "some other discreet and learned Minister of God's Word," could only be some other Priest, so accounted and esteemed.

12. There is not a vestige of any other interpretation of the words during three centuries.

It is clear then, that we have rightly interpreted



the direction of the Church, in which God has made us Priests, in that we freely received and ministered to those, who, by virtue of her direction, came to us. There is, however, one statement in the letter, which it is best to explain, because, as it stands, it might imply that there had been interference with others, or neglect of Episcopal authority. It speaks of "the authority which has been exercised by some, not only in our own Dioceses, but in other Dioceses, often without the knowledge, and probably (were it known) it would be against the consent both of Parish Priest and Bishop."

I suppose that the word "authority" is not used in a popular sense; for in that sense, none, as far as I know, has been exercised, except as far as individuals themselves have desired it, to protect them against themselves, or as it has been necessary to prevent their relapsing into a besetting sin. True repentance requires any person to avoid (when he lawfully may) any temptation which he has found by experience to be too strong for him. It would be trifling with God's ordinance, and with people's souls and our own, to give absolution to one who would not abstain from a proximate occasion of sin. But I doubt not that by the word "authority" you mean what the Church means when she bids us say, "by His *authority* committed unto me, I absolve thee from all thy sins, in the Name of the Father, and of the Son, and of the Holy Ghost."

I say this, lest this word "authority" should be

popularly misunderstood. In like way I fear that that other expression may be misunderstood, that "this authority would, if known, be against the consent both of Parish Priest and Bishop."

To take these separately. If a Parish Priest should object, because he objected to confession in itself with a view to the benefit of absolution; then he, by that very objection, the more sets free the individual, otherwise under his pastoral care. For the Church directed him to bid them come to himself, or "some other." If he will not receive them himself, then there can be no semblance of disrespect in going to "some other." His own pastoral authority is derived from the Church. He cannot employ it lawfully in discouraging that which the Church sanctions. In the cases in which I have myself exercised this office, I know of no case in which I had reason to think that the Parish Priest would have objected to it. I had often the use of their churches for the office.

Again, with respect to our Bishops. We ought not to assume that our Bishops would object to what we do, by virtue of the directions in the Prayer Book. We ought rather to assume that so long as we keep strictly to those directions, they would approve of what we do. There might be cases in which Priests might seem to be going beyond what the Prayer Book entitles us; *e. g.* if we were to press confession indiscriminately, or to teach persons whose own consciences did not move them to it, to use it systematically. Again, Bishops, it is possible, may have discouraged this or that individual, who, they thought, would use it indiscreetly, or urge it beyond what the Church (in the opinion of any such Bishop) recommends, or use it (as they might suppose) as part of a system which would draw people away from the Church. But I cannot believe it possible that any English Bishop would bid us send away those who came to us with burthened consciences or oppressed hearts, without the one remedy which they had, for years perhaps, longed and prayed for with their whole hearts. Still less can I imagine that any Bishop, to whom any of us could tell, in general terms, the blessed fruits of this ministry, could hesitate for a moment to bless God for His work.



If any of us did not go to the Bishop, it was, I doubt not, because the Church, having given the leave already, there was no occasion to apply to the Bishop, who could only direct us to the rule of the Church. The Church *does* require that "when[1] any such persons, as are of riper years, are to be baptized, timely notice shall be given to the Bishop;" but she gives no directions that we should apply to the Bishop, as to the use of the power of the keys, which she has without restriction intrusted to us. Her direction in the one case illustrates her silence in the other. We had no more occasion to apply to them for leave to receive those who, by virtue of

[1] Rubric prefixed to Office of Baptism for those of riper years.

the Church's direction, "came to" us, than for every other act of our office, in detail.

It is with great reluctance that I speak of myself. Yet since I have, from time to time, seen in Roman Catholic journals exaggerated statements as to what I have done, and as I may seem to be, with some few others, chiefly intended in this statement, I will mention it generally.

It is now some twelve years, I suppose, since I was first called upon to exercise this office. The more earnest preaching and teaching of repentance, which began in Oxford about 1835, drove people to look for a remedy for post-baptismal sin. The grievousness of "deadly sin, willingly committed after Baptism" (Art. 16), had been dwelt upon; but no other remedy pointed out than repentance proportioned to the sin, that so it might be washed out by the Blood of Christ. But persons' consciences needed some present comfort. They could not "quiet" them for themselves. They found the peace they longed for in the teaching of their Prayer Book. God taught them through it. The Church spoke to them by a "living voice;" for God made her words live in their ears and in their heart. In this place, as you know, we are under no Bishop. There is no jurisdiction. The Colleges are extra-parochial; the University is exempt from Episcopal jurisdiction. Here, as you would suppose, there must be many tender hearts, anxious about their salvation, to minister to, and here has been my chief ministry to



souls in this way. Then also priests came to me, who are plainly under no jurisdiction; many, because having been asked to receive the confessions of others, the office of ministering to these made them think the more that they themselves needed the same remedy. In like way, when residing elsewhere, I could not but conceive myself included in the Church's words, "or some other;" and so, when any came to me, I ministered to them. But not having a parochial cure, I have not led others to confession. I felt, too, that God's work is deeper than man's. Except before the University, in which I was preaching on the comforts for the penitent, I have preached repentance, review of life, rather than confession and absolution, because the soul must first feel itself wounded, before it can look for a cure; the heart must be broken first, before it can be bound up.

Again, as to continued confession, I suppose that there was no office, from which we at first shrank so much, as the receiving continued confessions. This too (as you know) was not produced by any scheme or system of our own, but, against our wishes (so much did we shrink from the office), by the very necessity of the case. For, as I have before said publicly, "It is well known that one who has once tasted 'the benefits of absolution' for heavier sins, and found good for his soul in the special counsels of God's ministers, longs mostly to continue to 'open his griefs' for slighter sins into which he afterwards

falls, that he finds it a healthful discipline for his soul, a safeguard often, by God's grace, against sin; that God gives him thereby lightness and gladness of heart, 'to go on his way,' through the wilderness, 'rejoicing.' Is such an one to be repelled? Is he to be told that the remedy he seeks for is only for those more deeply wounded, or bid go into other folds, if he still would have it[2]?"

I mention this now, because it has occasioned me to continue to receive confessions, from time to time, in other dioceses than my own. For all who have any experience, know that he can most effectually minister to a soul, build it up, speak to it, comfort it, who knows the whole extent of its griefs.

We have all of us, in this, acted with implicit faith in the teaching of our Church, and avowed that we received those who sought our help. My own sermons on the subject, which implied that I had been in the habit of receiving confessions, were preached in the most public congregation I could have, one in which I had no favour to look to[3]; and, as it happened, the first was in the presence of the Bishop of the Diocese, in which the University is situated. They were subsequently published to the Church.

Probably the writer of the letter had a different system in his mind, in which one who should receive

[2] Entire Absolution of the Penitent. Serm. ii. p. 7.

[3] The first was preached, in my first turn after the term of my suspension had expired, Septuagesima 1846.



confessions "against the will of the Parish Priest," would be thereby withdrawing from his care a soul intrusted to him *for this purpose*, and to whom he could, from circumstances, well minister. I will only say, that I know of no such case.

This part of the subject relates only to some of the acts of individuals, more or fewer. For Mr. Allies allows that no question can be raised, as to those who have cure of souls, within the district where they have that cure. But I suppose that the question which Mr. Allies first raised in his pamphlet, is involved also in this letter.

"If this is the system of the Church of England, had the Church of England a right to adopt it? Had the Church of England a right to leave her children free to choose to what Priest they should open their griefs, in order to receive 'the benefit of absolution?'"

Mr. Allies raises two classes of doubts; the one founded on abstract principles, the other on what he supposes to have been the uniform practice of the Church. Of these, the abstract principles, of course, presuppose the practice and depend upon it. The force of abstract principles in matters of religion, is to explain what we already know, to remove objections founded upon reason, not to be the foundation of any article of faith or practice. Human reason, purified by God's grace, agrees with and illustrates God's appointments. There is a harmony also between natural objects, as formed by the Hand of God, or

civil institutions, (as far as man's reason was guided by Him,) and the Divine institutions; but the things of nature or of man can neither be the measure, nor the interpreters of the things of God.

We will then consider the practice first. Mr. Allies says, "We can find in the first fifteen centuries of the Church's history no trace of any such power being allowed to reside in priests, in virtue merely of their ordination: on the contrary, the further we go back, the stricter appears to be the dependence of the priest on his Bishop in all such acts, until, in the first ages, we find the Bishop alone in person receiving penitents, and admitting them to absolution."

And, in like way, in Mr. Allies' pamphlet (p. 5): "These are not rules and principles of the Modern Church, or of the Western Church merely; but of the Ancient and Catholic Church. For many hundred years this power of absolution seems to have been exercised immediately by the Bishop, or by priests living in common with him, and under his immediate superintendence." And he appeals in proof to the case of St. Cyprian and the lapsed.

As to the early Church, Mr. Allies blends two very different things; the restoration of *public* offenders from excommunication, or a state of excommunication, and the private exercise of the power of the keys. In England, too, now, a priest undelegated could not interfere in a case of excommunication. Such was the case of the lapsed under St.



Cyprian. They had, if but for a short time, under tortures, denied Christ, and were apostates. St. Cyprian rules that they were to be received back again, after public confession and penitence, publicly "with imposition of hands by the Bishop and Clergy[4]." This was a case in which even St. Cyprian would not decide by himself. The tone of his several letters on the subject[5], to the martyrs and confessors, his clergy, the laity, the Roman Clergy, inviting their concurrence in the common remedy for this wide-spread evil, shows that it was one of the most anxious trials in his whole life. "A great sin, which has spread with incredible desolation over almost the whole world, ought only, as you write, to be dealt with, with caution and moderation, in a consultation of all the Bishops, Presbyters, Deacons, Confessors, and laymen who have stood fast, as you yourself in your letters testify[6]." "All the Bishops in Africa and Italy had agreed that nothing should be done until all had met together, and by mutual advice settled some sentence, tempered alike with discipline and mercy[7]."

It was a new and dreadful case, affecting the Church widely; and for which, therefore, it was of moment that one consistent remedy should be provided by the Church. Presbyters, who acted against this, acted in contumacy, "rebelling against this our

[4] Ep. 15.
[5] Ep. 15, sqq.
[6] Ep. 31. § 7.
[7] Ep. 43.

counsel [that of the collective Episcopate], and all Sacerdotal [Episcopal] authority and power is destroyed by factious conspiracies." One who persevered in this contumacy, after repeated warning, was excommunicated by the Bishops, not for reconciling penitents, but for restoring apostates, against the judgments of the Bishops collectively; and the same punishment was enacted for the future[8]. Even a Bishop was reprimanded by a Synod for so doing[9].

Of the African Councils again, the Second Council of Carthage, c. 4, and the Third, c. 32, relate to the restoration of those, who, for very great sins, were subjected to public penance, and were excommunicate.

Conc. Carth. ii. c. 4: "If any one be in imminent peril, and desires to be *reconciled to the altar of God*, if the Bishop be absent, the Presbyter ought to consult the Bishop, and so by his command reconcile him who is in peril."

Conc. Carth. iii. c. 32: "That the Presbyter shall not, without consulting the Bishop, *reconcile the penitent*, save in the absence of the Bishop, and necessity so compelling; but of whatsoever penitent the crime shall be public and spread widely abroad, which the whole Church knows, let hands be laid upon him before the apse."

Again, the Second Council of Carthage, c. 3, distinctly prohibits Presbyters from *restoring penitents* at the *public* offices, and places this amongst other Episcopal offices. So does the Second Council of Seville, A.D. 618, c. 7; and the Council of Agde, A.D. 506, c. 44. The same is forbidden to Presbyters by the Council of Eliberis, A.D. 205, and of Ticino, A.D. 850. In the books of Divine Offices, under the name of Alcuin, but probably of the eleventh century, it is spoken of among the Episcopal offices.

[8] Ep. 34.

[9] Ep. 64.



Conc. Carth. ii. c. 3: "I remember, it was decreed in the past Council, that the Chrism and *reconciliation of penitents*, and the consecration of virgins also, should not be done by Presbyters. What say you to this? All the Bishops said, 'Let not the making of Chrism, and the consecration of virgins, take place by the Presbyters, and that a Presbyter shall not be allowed to reconcile any one in the *public* mass, in this all agree.'"

Conc. Hisp. ii. c. 7: "Nor may they *publicly* reconcile any penitent in the mass."

Conc. Agath. c. 44: "A Presbyter shall in no wise be allowed to speak the benediction over the people in the Church, nor to bless a penitent in the Church."

Concil. Elib. c. 32: "If any one by a grievous lapse shall have fallen into destruction and death, it hath seemeth good that he should perform penitence, not with the Presbyter, but with the Bishop; but sickness requiring, the Presbyter ought to give him Communion, or a Deacon if the Priest commands him."

Conc. Ticin. c. 7: "The reconciliation of penitents, according to the institution of the ancient Canon, ought to be performed, not by Presbyters, but by Bishops, unless any one shall be in peril of life, and devoutly desire to be reconciled. If the Bishop be absent, the Presbyter ought to consult him, and so to reconcile the penitent by his direction. Else, as neither the making of the Chrism, nor the consecration of virgins, so neither ought the reconciling of penitents to be in any way performed by Presbyters."

The Council of Worms (A. D. 868), Can. 8, limited the prohibition to the public reconciliation only, and that, in the same words, and in connexion with the same episcopal acts, as the older Canons: " neither may he *publicly* in the mass reconcile any of the penitents."

In the Council of Seiligenstadt (A. D. 1022), Can. 10, " It was decreed that none of the Presbyters, except by command of the Bishop, should presume to bring into the Church any one to whom for any crime it is not allowed to enter it." The prohibition in the Council of Seville was extended to the Chorepiscopi also, in an extract from a spurious Epistle, incorporated into the Decretals [1], as St. Leo's. The name of the Chorepiscopi was inserted also wrongly in copies of the Council of Seville.

Morinus, having mentioned these Councils, says:

[1] Dist. 68. c. 4. Morinus quotes it as genuine.



" Since, then, the public and solemn reconciliation alone was in all ages forbidden to Presbyters, it is manifest that the private was permitted to them [2]." He accounts for the different practice among the modern Greeks on the ground that the penitence of the Greeks approaches nearer to the *public* form, than that of Latins of this day.

Gratian again (A.D. 1131) observes on the Council of Agde [3]: " Lo, one *excommunicated* by a Bishop cannot be reconciled by a priest. But it must be observed that public and private absolutions are different. Public reconciliation is, when penitents are publicly presented before the entrance of the Church, and through imposition of the hands of the Bishop, are publicly reconciled to the Church. Whence towards the end of the Canon, they are not simply forbidden to reconcile penitents, but only 'at the public mass.' But private reconciliation is, when those who repent of secret sins, or lie *in extremis*, approach to the grace of reconciliation. This reconciliation may take place through the Priest."

The sins which were the object of the public course of penance were very exceeding sins, for which penance was mostly allowed but once, and for which persons were excommunicated; and then mostly when they were publicly known. Tourneley admits, " By no Ecclesiastical law was there imposed a necessity of publicly declaring secret sins [4]."

[2] De Pœnit. ix. c. 32.
[3] C. 26. q. 6. c. 3.
[4] De Pœnit. q. 6. Art. 4. p. 450.

The office of Penitentiarius, which was abolished by Nectarius, belonged, it is thought, to the Greek Church only; and lasted about 120 years only[5]. It related (as Roman Catholics even contend) only to the public penitence.

What Mr. Allies says, then, as to the power of absolution being exercised only "for many hundred years by the Bishop and priests living in common with him," relates only to the public penitence. Nothing whatever follows from it as to any private confession. The very statement implies that there must have been a very different discipline.

The Bishop and the priests living in common with him, could not locally have heard confessions frequently throughout the diocese. Either then persons must have unburdened their consciences to neighbouring priests, or at very rare intervals, or not at all. But in whatever degree confession was used apart from the public penitence, the very fact that priests were so markedly forbidden to restore penitents in the *public* office, and in that only, implies that in other respects they were (as Morinus infers) free.

To mention two passages. In the East, both Origen and St. Basil imply that there was that freedom. Origen, after exhorting to confession, says, "Only[6] look diligently to whom thou oughtest to confess thy sin; *prove first the physician* to whom thou

[5] Socr. H. E. v. 19. et Vales. ibid.
[6] Hom. 2 in Ps. xxxvii.



shouldest set forth the cause of thy sickness, who knoweth how to be weak with the weak, to weep with the weeping, who knoweth the discipline of sympathy and compassion, that so, if he who shall first have shown himself both a skilful and merciful physician, shall advise thee, thou mayst do it." One, then, who had a burden of sin, might choose what priest he willed, to whom to open his griefs, and at his advice enter upon the public course of penitence or no.

St. Basil puts the question, "He[7] *who willeth* to confess (ἐξομολογήσασθαι, the public confession,) his sins, ought he to confess his sins at all, or to any, or to whom?" The question is inconceivable, had the system been as rigidly regulated as the statement presupposes. The answer is quite general, "It is necessary to confess the sins to those who are entrusted with the oracles of God."

And in another place in the same work,

"Ought[8] forbidden actions to be told, without shame, to all, or to some; and to what sort of persons?

"*Ans.* The discovering of sins has the same rules as the making known of bodily ailments. As then men do not reveal the ailments of the body to all, but to those skilled in their cure, so also the discovery of sins ought to be made to those able to cure them, as it is written, 'Ye that are strong, bear

[7] Reg. brev. Tract. q. 288.
[8] Ib. q. 229.

the infirmities of the weak,' *i. e.* by care remove them."

Far more remarkable than any such passages is the entire omission of the mention of private confession, or of any rule about it, or any restriction whatever as to making or receiving it. Had the present Latin discipline been that of the Ancient Church, it is impossible that we should have no traces of it, no indication whatever of these rules, of which, since the Council of Lateran, there is such frequent mention. In the Latin Church there is distinct evidence, in times later than these, that the penitent had choice of his confessor. The date of the "De vera et falsa Pœnitentia" (which for a long time was supposed to be St. Augustine's) is, I believe, uncertain. It is some time later than St. Augustine[9], whom it quotes and imitates. It says[1]:—

"Whoso wishes to confess his sins, that he may find grace, let him seek a priest *who knoweth how* to bind and loose; lest if he be negligent about himself, he be neglected by Him Who mercifully admonisheth him, and desireth that both should not fall into the ditch which he in his folly would not avoid."

So entirely was the choice left to the penitent, that he could even abuse it to his own hurt, by choosing for himself one unfit to judge of his case.

[9] The Benedictines mention other grounds. Opp. t. vi. App. p. 231.

[1] § 25, quoted Decr. de Pœnit. dist. 6. c. 1.



A further abuse is mentioned in the same book, which, among other things, may have led to a stricter system. The abuse was, to make half confessions to two different priests, in order to escape the shame of showing the full sinfulness to one. "Be[2] the penitent careful, lest through shame he divide his confession in his own mind, so as to purpose to lay open different things to different priests. For *some* conceal from one what they reserve to be laid open to another; which is to praise himself and to tend to hypocrisy, and ever to miss the pardon which a person hopeth to obtain whole, by piecemeal." The statement and the practice both imply an unrestrained access to priests, for the purpose of confession, at the option of the penitent.

This treatise enjoyed great authority in the Western Church. It is quoted largely in the Decretals as St. Augustine's, and had both the weight of the great father to whom it was attributed, and of the Decretals, which also stamped that authority upon it. Even in the limitation which Gratian puts upon the words, "let him seek a priest who knoweth," &c., which are inserted in the Decretals, he allows, (1.) that any prohibitions of the later Canon relate only to cases of contempt for a person's own priest; (2.) that a person is free, if the priest to whom any would naturally go, be plainly

[2] § 31, quoted Ibid. dist. 5. c. 1.

deficient in the qualities required for the office; if he be not skilled in the cure of souls.

Gratian's words are: "In that it is said that the penitent should choose a priest who knoweth how to bind and loose, it seemeth to be contrary to what is found in the Canons, that no one should presume to judge the parishioner (parochianus) of another. But it is one thing, out of favour and hatred to despise his own priest [proprium sacerdotem], which is forbidden by the sacred Canons; another, to avoid one blind, which by this authority each is admonished to do, lest 'if the blind should lead the blind, both should fall into the ditch[3].'"

There is in the treatise itself no such limitation as that in the later Canon, by which Gratian restricts the words "let him seek a priest," &c.; and on this ground Navarrus thinks that he restricts them unduly. But the only limitation which he puts is, that a person leave not his own priest out of partiality or dislike, but for his insufficiency. Partiality or dislike would at all times be bad tempers for a penitent; but the elder Church left more scope for the varying and sensitive minds even of penitents, and for that instinctive feeling which gives us confidence that one priest will understand the case of our soul better than another.

There is, however, a still more explicit passage quoted from the same work, in which the writer

[3] De Pœnit. ad dist. 6. p. 3.



says, "Whoso[4] then confesses at all, let him confess to the best priest that he can. If it be a hidden sin, let it suffice to refer it to the knowledge of the priest, that the 'offering of his gift' may be acceptable."

There is absolutely no plausible escape from this passage. Navarrus[5], an eminent Spanish divine and Canonist, of the time of the Council of Trent, after examining different explanations, rejects them as insufficient. It will illustrate the clearness of the text to observe the ways in which it is attempted to get rid of it.

The gloss says, it was (1.) where there were several priests. Navarrus answers, there are few of those in comparison; but that "those are *very rare* indeed (rarissimæ) in which there is a college of priests without a head, and the care of souls is with each of them," mostly, "the care of souls is with one of them."

Or, (2.) "that confession should be made to a second priest, if the first was ignorant." Of this, too, Navarrus says it is too rare to be provided for, and appeals to experience that few, when confession has been lawfully made, repeat it.

(3.) He adduces the case of the Franciscans, Dominicans, &c. who had the privilege of receiving confessions. But he answers, this writer is older

[4] § 25, 26, quoted in Decr. de Pœnit. d. 6. c. 1.

[5] Azpilcueta. He died at Rome, A.D. 1586. "He was the oracle of Rome, and the whole Christian world." Dict. Hist.

than the provision by which those orders had that privilege.

(4.) He says that it may mean, (1.) that whoso *may* choose a confessor, may choose the best he can, in whatsoever way that power come to him, whether by common law, or by any peculiar law; or (2.) that the parish priest should gladly give him that power, if he ask; and that, either because through his own ignorance he ought to do so, or although he be not bound, yet of his own accord he should do so willingly.

This falls plainly short of the broad words of the writer, thus adopted in the Canon law, "qui ergo omnino confitetur, sacerdoti meliori quam potest confiteatur." The words plainly never would have been written thus, had the modern system then prevailed. So that Navarrus sums up, "There is no contradiction that in the time of Augustine, it was not as yet forbidden to hear [in confession] the parishioners of others, but in the time of Urban it was."

Navarrus fixes the date of Urban II., because of the words of the decree on this subject, to which, in the Decretals, his name is twice prefixed. The recent editor thinks that Gratian mistook in affixing his name to it, because in a collection of Councils by Anselm, Bishop of Lucca, A.D. 1071—1086, it is ascribed to a Concilium Hybernense. To this question it is of no moment[6]. Whether it was a

[6] Later Canons are inserted in the collection of Anselm; so that this Canon, being now found in that collection, is no proof that it was anterior to Urban II. In the Decretals it is twice cited as Urban's, C. 9. q. 2. c. 2. and De Pœnit. dist. 6. c. 3.



decree of Pope Urban II., or of an unknown Council, it was received into the Decretals, and became part of the Canon law about A.D. 1151.

Navarrus' argument holds in any case, that this law implies a change in the existing rules of the Church. The decree is,—

"It is decreed, that *henceforth* no priest shall be allowed to receive to repentance any one committed to another priest, *without the consent of him to whom he first committed himself*, except through the *ignorance* of him *to whom the penitent first confessed.* But whoso shall presume to act against these statutes, shall be in peril of losing his rank."

On this Navarrus argues, "Observe[7] first from this text that it was allowed to any Christian before Urban II. to choose any priest. For this word 'henceforth' and the like, denote that the constitutions in which they are placed do not comprise the past, as is stated in the gloss joined to the Preface to the Clementines."

Navarrus himself alleges as an objection to this, that there are decrees attributed to Calixtus (A.D. 221) and Dionysius (A.D. 259), which prohibit the like interference: "We have given distinct Churches to each Presbyter, and we have divided the parishes and the cemeteries, and have appointed that no one

[7] In c. Placuit. de Pœnit. dist. 6. n. 1, sqq.

invade the bounds or right of another parish, but each be content with his own bounds."

Both these passages are from the forged Decretals[8]. The former relates to Bishops only, and external jurisdiction; that of Dionysius is a mere forgery. Navarrus then rightly says that those decrees were not then received, for they were not in being.

"I see no other sense which truly accords with the passage ['let him choose a priest who knoweth, &c.'], than that in the time of Augustine, half way between Dionysius and Calixtus on the one side, and Urban II. on the other, it was still lawful to choose a confessor, according to the simple laws of the Gospel, the statutes of Calixtus and Dionysius not being then received." Suarez[9], who says that he alleges this without proof, brings no proof himself on the other side; and builds upon the forged Decretals[1].

"It is," he says again[2], "the *common doctrine* that any Presbyter of the Primitive Church could absolve any Christian which our text proves, weighing the word 'henceforth.'"

But further, the very decretal itself only puts one slight restraint upon the choice, and allows the choice to be once made, but prohibits fickleness. Its words are, sine ejus consensu, *cui prius se com-*

[8] That inscribed to P. Calixtus is C. ix. q. 1. c. 1; that given to P. Dionysius is C. xiii. q. 1. c. 1.

[9] Disp. xvi. de Pœnit. et Rem. Pecc. s. iii. p. 223.

[1] Ib. et Disp. 27. de fac. elig. conf. s. 2. n. 22.

[2] l. c. n. 11.



*misit*, "without his consent to whom *he* first *committed himself*," it prohibits, then, a person withdrawing himself from one to whom he had previously *committed himself*, which might probably arise from fickleness, impenitence, wilfulness, or some other moral fault. But it shows by its very prohibition, that it was at his own option to whom to "*commit himself*."

Alex. Alensis gives it as one solution: "It[3] is understood of a man who has his own freedom, before he committed himself to any Priest; for it is expedient for such an one to choose the most prudent and best that he can."

Coninck insists on the expression in the like way: "It is not said that he cannot confess to another without *his* permission to whom he was committed by superiors, or who has given him as his Parish Priest,—but without *his* permission to whom he committed himself, or whom he went of his own accord for the sake of confession."

Dom. Soto[4] rightly corrects the gloss on this Decretal, which explains away these words. "The gloss which says 'committed himself,' *i. e.* because he is his parishioner, perverts the sense." This is plain. The Decretal speaks of a voluntary and unrestricted act, "he committed himself." Soto's own explanation is: "It provides against the ambition of priests, that after one has given himself up to one,

[3] Qu. 19. membr. 1. Art. 2.

[4] l. c. Disp. 27. s. 2. n. 22.

*although he have the privilege of choosing another*, no other may receive him, except for the ignorance of the former; for then he may freely pass to another." But it is plain that had there been then this restriction, it would have been expressed. Soto says again, that some supply "having obtained the licence of a superior." This too he rejects, and says: "As far as may be conjectured from the words of the text, the public penitence is there spoken of, of which, when imposed by one priest, the penitent sought to be relieved by another. As now also, indolent penitents are wont to do as to secret penitences."

Suarez adopts the interpretation of Soto, and, like him, dwells on the expression "committed himself," as proving the act to be voluntary. "I weigh the reciprocal pronoun 'himself;' for it is clear from this that it does not speak simply of the commission given to the pastors of the Church by the division of jurisdictions, but of that commission and subjection whereby the penitent in act *places himself* under a Priest, with the will of confessing to him."

Gregory de Valentia, in turn[5], rejects the explanation of Soto as unsatisfactory. "Sotus does not grant this as to the Parish Priests, divining something, I know not what, about the text of that Urban, against the interpretation of the gloss, and speaking in a perplexed way about that Canon, as also does Melchior Canus (Rel. de Pœnit. 5-6)

[5] In P. 3. disp. 7. q. 10. p. 2.



whereas the text of that Canon of Urban plainly speaks generally of a Priest to whom a person was committed [and had 'committed himself'], that if *he* be ignorant, it is lawful for him to confess to another."

Vasquez[6] also remarks on Soto's gloss, "It is unsatisfactory; for it is to divine an interpretation of the text, whereas it speaks plainly of this sacrament of penance; for the Pontiff (Urban II.) only intended to distinguish the jurisdiction of parishes, as appears plainly from the text." He says also that the permission to leave the former priest and choose a new one, on account of the ignorance of the former, was manifestly not recalled; that, in forbidding to go to another priest without licence, it did not recall the positive law, which allowed it in the one case of ignorance.

Each of these remarks on the weak point of the others; the one party omits all notice that the original act of the penitent is represented as voluntary, "committed himself;" the other brings in the subject of "public penitence," of which there is not one word in the Decretal. Its simple words, "It hath seemed good that *henceforth*,"—"he to whom he *committed himself*," do not admit the glosses that the same was forbidden before, or that the person spoken of could not freely commit himself. Such glosses only show the more the dif-

[6] Qu. 93. Art. 2. [ex err. typ. 1] dub. 3. n. 5, 6.

ference between the time of Urban II. and of the writers.

The exception, again, made in this Decretal, in the case of the incompetency or ignorance of the priest to whom he had committed himself, agrees with the direction in the other, to "select the best priest any one could." There is no restriction as to this; and, however it may have been subsequently limited by the direction of the Lateran Council, that "those who for a just cause wished to confess to any other than their 'own priest,' should first ask and obtain leave of their own priest," this decree leaves it free. The gloss on the decree, although much subsequent, allows this. "So then[7] for his ignorance, one might, on the authority of this canon, go to another, without licence of man, *i.e.* of that unskilled presbyter. It suffices that this be allowed by the law (Arg. ff. de Condi. Inst. qui sub § ult.). But is that strange priest to believe the simple word of that penitent who says that his priest is unskilled? Yes. For it is not likely that he would come with a lie to penitence. C. i. q. 7. c. 26."

On this Navarrus says: "From[8] the first part of the gloss it is inferred, that any one may confess without the leave of the parish priest, when he is ignorant. For which conclusion this text seems

[7] In the second place where it is quoted, De Pœn. dist. 6. c. 3.

[8] l. c. in glossam 3. n. 138.



irrefragable. For it is said therein, that no priest may hear the confession of the parishioner of another without the consent of his own parish priest, except on account of his ignorance. Then, when he is ignorant, his consent is not necessary. The preceding section favours this, in which Gratian says, that the parishioner may choose a confessor for himself, whom he wills, when the Parish Priest is blind or ignorant." —"It rests the power of hearing the confession, not upon the asking or obtaining leave, but solely upon the ignorance of the priest."—"It does not imply that the leave is either to be obtained or asked, when the parish priest is quitted for his ignorance."

He explains the difference between this Decretal and that of the Lateran Council, by the different discipline which prevailed at each. "At[9] the time of this chapter (A.D. 1087-99) it was not necessary that leave should be asked or obtained, when the Parish Priest was passed over for ignorance or any cause derived from his own fault." He thinks also that the case is the same as to any other cause grounded on the fault of the priest, whether he revealed the confession or incited the penitent to evil.

Again, Medina[1] says, "In that it says, 'henceforth,' it plainly signifies that before that time, penitents used, for many causes, to leave their own curates, [the Canon says, 'him to whom he committed himself'] and go to others." "All which causes," he says, "the text itself excludes, and ad-

[9] l. c. n. 145.

[1] Q. 30. ad 1. Q. 33. E.

mits that of ignorance alone, and accordingly the gloss there does not with reason extend the decree to any other just cause."

Medina, however, himself admits that there is a good deal of probability that in all such cases of moral unfitness in the priest, the penitent remained free. "By parity of reason," says Gabr. Biel [2], following De Palude, "when the Priest with cure of souls have any of these defects, the parishioners may confess without his leave, since these are no less defects than ignorance or indiscretion." "If he may be rejected for ignorance," says Richard de Media Villa [3], "much more may he be for an evil will." "Ignorance" was probably used as a large term for unfitness. Whence we find the quality expressed by "ignorant [4] and indiscreet," or simply "indiscreet [5]." The gloss says broadly, "either because he will not assign penance, or for any other just cause." And Antoninus [6], "Under this case is comprehended, when the priest himself soliciteth to evil, or reveals confessions [7], or is such, that danger

[2] 4 Dist. 17. q. 1. d. 4.

[3] Dist. 17. Art. 3. q. 7. ad 1.

[4] Medina, q. 30.

[5] "Cum habet quis indiscretum confessorem." Goffr. (L. v. de pœn. et rem.) quoting this decretal, "altogether indiscreet, ignorant, or foolish." Sylv.

[6] 3 p. tit. 17. c. 4. de Conf. and Sylvester, Conf. i. 6.

[7] This is instanced by De Palude also and Medina. Medina adds, as alleged by others, "any notable defect, either of nature or fault, or canonical hindrance, if the Curate be out of his mind or sick."



would impend either upon the confessing or the confessor. In this case, then, Hostiensis says, that "by the very fact he has leave to go to another priest."

It is right, however painful, to say that the books put, under this head, dreadful cases of sin, in which, if there be peril to the party confessing [8], she is exempted from it. Medina gives it as a probable opinion that a person may go away from the Parish Priest, of whom there is a probable presumption, that he will solicit the person confessing to evil, or does not know the questions necessary to be asked, or cannot give wholesome counsel to the party confessing. "For then, although he is not absolutely without means of confessing, yet he has not means of confessing healthfully, if there be probable apprehension, that he will receive a confession, and that to the notable harm of those confessing." "In these and the like cases," says Medina, "it is probable that the penitent can go freely to whom he will, and [even after the Council of Lateran] it will suffice that he will hear of the curate, although he do not obtain it." And in this Antoninus follows him on the ground, that "though he be unworthy to hear, he is not without power to commit [the authority to others]."

In this case, there were the two opinions, the one that of Aquinas and Medina, that the penitent

[8] This occurs in different forms in different writers. Richard and Medina put the question as to "mulier quæ cum suo curato fornicata est." Medina and others mention "solicitator mulierum."

might confess to God only within; the other, that of Richard and others, that "if the priest maliciously refuse it, she may confess to another priest." The whole question implies a freedom of choice still remaining[9]. Some held that it was necessary in such case to apply to the Bishop, if access to him was easy; others deny this, since it is not specified in the law; in any case, if access was not easy, recourse, it was held, need not be had to him.

As private confession increased, it was, naturally, more systematized. It is natural that persons should have *one* confessor. One who knows the whole heart in the past, as well as in the present, can counsel best for the soul. It is natural that the Parish Priest should be that person, if otherwise qualified. It is best, also, that he who has ordinarily to minister to the soul, should know its wants to which he has to minister. "The shepherd[1]," say the schoolmen, "should know the face of his sheep." When, also, confession became matter of discipline, not the result of God's working in the conscience only, it was the more necessary to guard against any

[9] There is a further class of cases, included less obviously in this head, where the penitent might fear the displeasure of the priest, as having offended him. Rich. l. c. ad 2. "If the parishioner had secretly contrived any thing against the person of the priest, of which machination he could be absolved by that priest, he would not be bound to confess it to him, lest he should be provoked to hatred."

[1] Prov. xxvii. 23.



evasion. It would not ordinarily be for a good motive that persons withdrew themselves from those who had the pastoral charge over them. Except for some special circumstances, it would imply some defect in the shepherd or the sheep.

It was, doubtless, a wise regulation, when the confession was made compulsory, that it should be made to a definite person. The question raised is not as to its expediency in a given case, but whether it be essential to the grace of Absolution. Mr. Allies assumes that it was the exclusive practice of the Church for fifteen centuries. I think, from this, we must deduct nearly eleven, the date of Pope Urban II. Indeed, the decree of Urban II. (if it be his) implies, as we have just seen, a greater freedom of choice, still remaining.

I know of little further evidence before the Council of Lateran, A. D. 1215. There are some Provincial regulations made as to the case of those who fell privately into the same grievous offences, for which, if they became notorious, a course of public penance was enjoined. But these were both local, and a part of the more formal discipline of the Church, still kept in the Bishop's hands. It belongs to the relation of Presbyters to the Bishop, not among themselves. It relates to a class of sins of which the discipline was, in some instances, kept in the Bishop's own hands, in others, given up to the Presbyters. It belongs to the external Court, not to the internal.

Thus it is provided by the Council of Ticino, Can. 6: "The Archpresbyters of the people must find out and exhort, one by one, every father of a family, that both themselves and all who dwell in their houses, who have publicly perpetrated crimes, should publicly repent.

"But they who have offended secretly, let them confess to those whom the Bishops and Archpresbyters of the people have chosen to be physicians of the more secret wounds of minds."

And in the Capitula of Herard, Archbishop of Tours, A.D. 855: "Let [2] Presbyters reconcile penitents for secret sins, at the command of the Bishop, and, as we premised above, absolve and communicate the sick."

The latter clause relates to the excommunicated who were restored to communion on their deathbed, as it is expressed in the rule to which it refers: "That [3] those who lie sick be reconciled without delay," and so in like way does the first relate to those who, for grievous sin, were placed under a course of private penitence, at the discretion of the Bishop. The excommunicate could only be restored by the Bishop, or in his name.

[2] Capp. c. 59. in Capitular. Baluz. p. 1291, quoted C. 26. q. 9. c. 4. from the forged Decretals as Evaristus Papa, A.D. 112.

[3] Cap. 21. comp. Capitular. l. 34. "Of those who are in peril, and who turn to God, that they be inquired of according to the Canons as to reconciliation, and be reconciled according to the Canons."



On the other hand, Ratherius, Bishop of Verona, A.D. 928, speaks of secret sins as left to the presbyters altogether. He writes to his presbyters: "Know [4] that for secret sins ye can assign penitence; acknowledge that for public, ye must refer to me." He forbids them to celebrate mass [5] in another parish "without the wish and request of the Parish Priest, if present," but there is no other limitation as to confession.

Of other restrictions I know only of a Capitular [6] of Ahyto, Bishop of Basle, requiring those who go to Rome to confess their sins at home before they go, "because they are to be bound or loosed by their own Bishop or Priest, not by a foreigner." He died A.D. 836.[7]

It would be a great temptation to deception, for persons to confess at a distance where they were unknown.

In the Decretals, there are among the Paleæ (and so perhaps held to be of secondary authority) two rules from the Council of Nantes II.[8] (placed about A.D. 896), which forbid to admit to communion the parishioner of another who despises his own priest. They are then of much the same character as our

[4] Synodic. ad Presbyter. fin. ap. Baluz. ii. p. 265.

[5] Ib. p. 262.

[6] Cap. 18. in Baluz. Spicil. T. 6. p. 696, quoted by Thomassin.

[7] Hermann Contract. in Chron. quoted by Aub. Miræus de Script. Eccl. n. 249.

[8] C. ix. q. 2. c. 4, 5.

Canon 57, which forbids "to refuse Sacraments at the hands of unpreaching Ministers," or to leave their own parish Church on that respect.

1. "On[9] Lord's days and festivals, let the presbyters before they celebrate mass, ask the people, whether the parishioner of another be in the Church, who, despising his own presbyter, wisheth to hear mass there. If they find him, let them forthwith cast him out of the Church, and compel him to return to his own parish."

2. "Let no presbyter or deacon venture to receive to mass the parishioner of another, unless he be on a journey or have a suit there."

But on the subject of confession, I see in the Decretals, no further restriction than one in the 12th century, relating to the relaxation of *public* penitence by the Bishops to those who did religious or civil works for the good of others.

It occurs in a letter, ascribed to Alexander III., to the Archbishop of Canterbury[1], A.D. 1172.

"In that thou hast consulted me, whether remissions which are given at the dedications of churches, or to those who contribute to the building of bridges, benefit others than those who are under the persons remitting; we wish you, brother, to hold this, that since none can be bound or absolved by any but his

[9] Concil. T. ix. p. 468. ed. Labbe.

[1] This would probably be St. Thomas à Becket. I have not found the passage in Pope Alexander's letters, in the Concilia. It is quoted Decr. Greg. v. tit. 38. de pœn. et rem. c. 4.



own judge, we think that the remissions aforesaid only benefit those, to whom their own judges specially indulged them, that they might benefit them."

Bishops only had the power to give those relaxations; and there is evidence that they were given by Bishops for their own Dioceses.

Goffridus, in language corresponding to this letter[2], says, "Bishops and Archbishops can make general remissions (for instance in the building of bridges, and at the dedications of Churches,) which benefit those alone who are subject to the Bishops making them."

Navarrus, who puts diligently together whatever hints there are, finds no other rules, but only certain principles bearing upon the subject of non-interference.

Such are the rules which I before mentioned, of "not transgressing the land-marks set," or "thrusting a sickle into another's harvest," although not applied in the Decretals to this case.

In our own Church, I find no notice of any restriction, either in the canons of Theodore or any of our Anglo-Saxon Canons, nor indeed until the time which Mr. Allies points out, *after* the Council of Lateran. And the very fact of Episcopal restrictions taking place then, and not before, seems to show that they were the result of that Council, whose rule they carried out. Thomassin quotes a Council of York, A.D.

[2] Goffr. de Trano. L. v. de pœn. et rem.

1194[3], which mentions a general confessor for the Diocese, who, in the absence of the Bishop, might relieve from *excommunication*. But this, like the instances already cited, relates to the *public* penitence for notorious sins. The first mention of special confessors for the clergy is in Episcopal Constitutions, A.D. 1217, *i. e.* two years after the Council of Lateran. After this, he instances several Councils which make regulations as to this: Oxford, 1222, Lambeth, 1281, Exeter, 1287. In France, the earliest authority quoted is the Council of Paris, A.D. 1212.

This omission of the restriction before the Council of Lateran and its mention afterwards, is further illustrated by comparing P. Lombard, who died A.D. 1164, about fifty years before the Council of Lateran, with the Schoolmen who wrote after that Council. P. Lombard is said to have compiled his book from older sources. He has a chapter on the subject, "When[4] are these keys given, and to whom?" He answers, "These keys are given through the ministry of the Bishop to any one, in the promotion to the priesthood. For when one receiveth the priestly order, he receiveth therewith these keys also." He then refutes those who say that "the power of binding and loosing is given to those priests alone, who are of exemplary life and doctrine," and maintains that "this key of binding and loosing is given to all priests, but that they only have it rightly and worthily,

[3] Vetus et nova Eccl. Disc. p. 1. l. 2. c. 10.

[4] L. 4. Dist. 19.



who preserve Apostolic life and doctrine. For that God giveth His blessing to him who asketh worthily, even through an unworthy minister." And he quotes as St. Jerome's the words of Rabanus Maurus on St. Matt. xvi. 28. "The other Apostles have the same judicial authority [as St. Peter]. The whole Church has it now in the Bishops and Presbyters." And he gives no hint as to any limitation on the use of this power.

The Schoolmen, on the other hand, who wrote after the Council of Lateran, invariably speak of the Proprius Sacerdos, and that, in commenting on P. Lombard, who makes no mention of it. The first is Alexander Alensis, our own countryman, who wrote about fifteen years after that Council. Yet it is remarkable that he treats it entirely as a regulation of the Church, a matter of good order.

He says, "there[5] ought to be order." "To every man there is committed his own portion, according to the distribution fitting, and this is called his harvest. And because no priest may put his sickle into another's harvest, therefore one hath not this power of absolving the subject of another; and no one hath the power to absolve another's subject, unless he be the superior, or act for the superior, as the Penitentiary of Bishops, or legate, or one privileged, who can do these things by the authority of the superior. Yet this is to be understood according to the com-

[5] Summa, p. iv. q. 21. memb. 3. Art. 2. resolut.

mon law. But the law of charity and the righteousness of justice permits that, in a time of necessity, any one may absolve any one, if he be in the unity of the Church."

Again; "it hath pleased the Church, not that every priest should have power and the use of the power over every one, but rather over those subject to him, and that they who have no subjects, have the power, but not the use thereof. That therefore every one may know to whom he entrusts sacred things[6], it is expedient that he know the face of his flock; lest holy things should be committed to unworthy persons, if each presbyter had power over each person, so then, according as the times are changed, the priestly rights are changed with the priesthood."

The Council of Lateran itself enacts the necessity of confessing to a person's own priest, only as a positive law, and is so quoted by Aquinas.

The foundation upon which Aquinas builds, is the practice of the Western Church, as recently prescribed and made binding by the Council of Lateran.

In his supplement to his "Summa[7]," this is plainly his ground. His very object is to maintain the rule of the Council of Lateran, that a man ought to "confess to his own Priest." He brings forward as objections, authorities which went under the ancient names of St. Gregory and St. Augustine, the evils which might ensue from such limitations, the absence

[6] "Facta" must be an error for "sancta."
[7] q. 8. Art. 4.



of limitation in the other priestly office of celebrating the Holy Eucharist, and the case of the Pope and prelates who had no "proprius sacerdos." To these he opposes as his ground the Lateran Council which commands, "let all of either sex confess once in the year to their own priest," and a rule founded on the Canons. "The same relation which the Bishop has to his Diocese, the priest has to his parish. But one Bishop may not exercise his office in the Diocese of another Bishop, according to the enactment of the Canons. Therefore one priest may not hear the parishioners of another."

The ground then upon which Aquinas rests, is the *then* positive law, not the abstract fitness of things, nor the absolute necessity of them. And this law he speaks of as Innocent's. He meets the arguments which he adduces with the single fact, that Innocent III. had *enacted* differently. "But against it, is the *decree* of Innocent, who *instituted* (instituit), that all of each sex should confess once in the year to their own priest." Moderns have contended that the only change made in the Council of Lateran, was, that it was then enacted for the first time, that all should confess once in the year. But Aquinas, who was born nine years after the Council, and who lectured on the Sentences before forty had elapsed, speaks of it distinctly in reference to *this very point*, as "a decree" and "*institution* of Innocent III."

In like way, in his work on the Sentences of P.

Lombard, he sets forth[8] as objections to the limitation, that priests receive the power without any limitation; the analogy of physical keys which unlock all wards of the same kind, as all sins are the same obstacle to entering heaven: the analogy of the Old Testament priesthood, in which the priest might pronounce upon the leprosy of all lepers alike.

The ground which he alleges against these, is a maxim of Gratian, founded on the Lateran Council. "It[9] is not lawful for any priest to absolve or bind the parishioner of another."

What Aquinas there says of jurisdiction proceeds on the positive law. He was living in a system in which all had been, by the recent Council of Lateran, not only subjected to a particular priest, but enjoined to confess to him once in the year. The unlimited exercise of the keys, then, which he opposes, could not have place, without contravening the direct law of the Church. A priest could not absolve one placed by the Church under another, without contravening the authority of the Church, to which, and to priests in it, our Lord Jesus Christ left power to forgive sins.

Again, in meeting an objection in detail, he speaks of this whole regulation as one of positive law. The objection is that it might, in some cases, be pernicious to confess to a person's "own priest." "What

[8] In l. iv. Dist. 19. q. 1. Art. 3.

[9] On C. 16. q. 1. c. 19. It is generally quoted as c. *Adjicimus;* but they are Gratian's words, not those of the Decretal.



is instituted for charity, militateth not against charity, says Bernard; but confession, which is instituted for charity, would militate against charity, if a man were bound to confess to one priest. As, suppose if the sinner knows that his priest is a heretic, or enticer to evil, or frail, prone to the sin which one confesses to him, or there be probable ground to think that he is a revealer of confessions, or if the sin which a man has to confess, be against himself." Aquinas answers:—

"In those cases, in which a penitent has probable ground to fear peril to himself or to the priest from the confession which he has to make to him, he ought to have recourse to a superior, and ask from him licence to confess to another. But if he cannot have the licence, the case must be judged of as that of his, who has not access to a priest; whence he ought rather to choose a layman to whom to confess. Nor in this is any *precept of the Church* transgressed. For *the precepts of the positive law* do not extend beyond the intention of the giver of the precept, and that intention is the end of the commandment, which is charity."

He here distinctly speaks of it, as "a precept of the Church," and "a positive law." But positive laws are not immutable.

Further, Aquinas speaks of jurisdiction, in relation to the power of the keys, as a limitation which might be anew extended.

"The power of the keys in itself extends to

all; but that a priest cannot use the power of the keys, happens from this, that his power *is specially limited* to certain persons. *Whence he who limited it, can extend it to whom he wills.*" This is all which is needed for the English Church. The power of limitation or extension rests with the Bishop. He is not bound to limit the use of the power of the keys. And if one Bishop may give the power of the keys without restriction within his own Diocese, much more may all the Bishops, in a national synod, agree, to allow all, priests or people, to have recourse to any, in whom they may most confide.

This way of regarding the Council of Lateran as a positive law is adopted by several of the writers of the later Roman Church. Thus Cardinal Caietan says, "It seemeth[1] to be *commonly* said that the power of order of itself would extend to those to be absolved, unless jurisdiction were limited by the Church. He answers, "To this it is said that all Priests were ordained not only Priests in common but Judges in common, in the Court of Penitence. This second sense is true, supposing the truth of what is said, that, before the distinction of parishes, &c., Priests received both powers; so that then they were both Priests in common and Judges in common; but since, they are ordained indeed as Priests in common, but become [persons'] own judges, by as-

[1] Opuscula. Tr. 7.



signing to them people of their own. In like way, Almain says that "many doctors hold, (as Armachanus in the ninth book, Marcilius in the second, and Durandus also,)

"1. That by the Institution of Christ, any Priest may use the key towards any one submitted to him by a voluntary and secret submission. 2. That the Church may reasonably prevent any one from absolving any sinner, if he attempt it. And this on the ground that a person cannot be absolved from his sins, while actually committing another deadly sin; but that one who herein acts against the prohibition of the Church does commit a deadly sin. I will add the statement of Vazquez, who came after the Council of Trent, and admits that it is an open question among themselves, how it is prohibited. "All Catholics agree that *at least considering the canon law and statutes*, all have not this power, to give absolution, since by *human law* all are prohibited from administering this sacrament indifferently; but how this is to be understood, all Catholics do not agree." And, as I said, he himself corrects, on both sides, those who had gone before him.

But what is done by human law, may be undone by human law.

But this, as I have said, enters upon a question, which becomes one of words; for those who maintain that "jurisdiction" is given by Christ in ordination, mean that it is given, subject to limitation by the Church; and those who maintain that it is not, con-

tend that it is not, only lest thereby it should seem that the Church has not the power to regulate this exercise of the priestly office.

Let me now sum up, again, what has been said under this head.

1. The proof that Priests were not to reconcile penitents, adduced by Mr. Allies, relates solely to the course of *public* penitence for the most grievous sins.

2. While there are Canons of Councils, general and provincial, forbidding other interference, there are no such Canons for the first 1200 years, restricting private confession, except where it would interfere with public discipline, or was a part of it.

3. It has been observed by writers on the Canons, that the marked limitation of the restriction in the Canons to the *public* penitence, shows that private penitence was left free.

4. Either there was little or no private confession, or it must have been mostly carried on without being subject to any regulations. It could not have been carried on by the Bishops, as Mr. Allies says.

5. I have given instances from Origen and St. Basil in the East, and in later times, in the West from the author of a work long had in chief estimation and received in the Decretals, who leave the choice entirely open to the penitent; and none can be produced on the other side.

6. The Pope, who first limited it in any way



(setting aside the forged Decretals), Urban II. A.D. 1087, *expresses* that this was a *change* in discipline.

7. Even this change left it free to a person to commit himself to a priest in the first instance, although it forbade his removing to another after he had so chosen. It bears witness, that it was the practice at that time for persons to "commit *themselves*" at their own choice for confession.

8. The Council of Lateran was understood, about the time, to make this restriction a matter of *positive* law. But any restrictions which the Church has power to make, it has power also to relax.

To this should be added the great amount of evidence arising from those many cases in which law, or the permission of the Pope, of the Bishop, of the Parish Priest, and Provincial Synod, custom, or the tacit permission of those having authority, were accounted sufficient to relax even the law of the Council of Lateran. Law, nor custom, nor the Pope, could dispense with any thing required by the law of God, and essential to the validity of absolution. Since then, in such various cases, whole classes of men, the highest and the lowest, laity or clergy, all Kings, all Priests, all who were strictly under no "Priest of their own," and many a mountaineer and peasant, who were not allowed to confess to their Parish Priest, might, on this ground only, confess to whom they would, it would be clear that the Church of England dispensed with nothing essential, when she directed her Priests from the altar to bid all troubled

in conscience to come to themselves, or whom else they chose. The Church of England has only made *that* compulsory upon her Priests, which Aquinas says, if they did not, they would bring damnation upon themselves; and instead of leaving them to judge in each particular case, whether they would give leave or no, has obliged them once for all to direct their people, who needed it, to come to themselves "or some other."

One expression, indeed, in the decree of the Lateran Council has been urged in proof that it is not enacting positive law, but declaring what must be, in the nature of the case itself. It says: "Let all the faithful of both sexes, as soon as they come to years of discretion, faithfully confess all their sins in private, at least once a year, to their own priest; but if any one for a just reason desire to confess his sins to a priest not his own, let him first ask and obtain leave from his own priest, since otherwise he cannot absolve or bind him." The emphasis has been placed upon the word "cannot," as though this were meant of a thing abstractedly impossible. It means only that he could not do what the Church forbade him. He could not bind whom he had no authority to bind. He could not loose; for both the Priest and the person confessing would so be acting in direct contravention of the law of the Church. But one acting in contumacy to the Church is no penitent; nor can the powers entrusted by the Church be savingly employed against the Church.



The same expression is used in the Synod of Bayeux, A. D. 1300 (Can. 108), "We[2] strictly enjoin all Parish Priests, Chaplains, and Perpetual Curates, to confess once a year to us or to our Penitentiary. Since they cannot [non possint] be absolved by a priest not their own, who hath not cure of souls, and a confession made to any other than his own prelate, is known to be of no value. Yet in case of necessity they shall have the power [poterunt] to confess to other *lettered* priests. Yet let them not for this, omit to come to us or to our Penitentiary, once in the year."

Now, "cannot" here, *can* mean only "cannot, so long as it was forbidden." For priests were allowed subsequently by *custom* to confess to whom they would. And custom (it was ruled), was of no avail against positive law. The priest was no longer "alienus" when the Church allowed him to act. The rule that the Clergy should confess to the Bishop or his Penitentiary, once in the year, was clearly one of discipline only, since the other confessions, when permitted, were valid. The limitation of the "lettered priest" explains the previous exclusion of priests without cure of souls, *viz.* for fear they might be ignorant.

I may add some principles, stated by Navarrus, which altogether accord with the provision of the English Church. "The[3] return to the ancient law is ready and easy, as is plain from the c. ab exor-

[2] Conc. T. xi. P. 2. p. 1450.

[3] l. c. n. 37, 38.

dio [4] and all which Felinus [5] heaps together. But by this custom, a return is made to the ancient state of the law. For before this chapter (C. 9. q. 2. c. 2.) as is signified by the word 'henceforth,' in it, and by other laws consonant to it, every one was allowed to choose his own confessor. So then a return to it ought to be easy. Lastly, every custom, which is not against the Divine law, whether that of nature, or of revelation, (if it be otherwise reasonable and prescript,) prevails against the law and takes it away, if opposite [6]. But this custom is such; as is clear if we weigh particulars. For it is not against the Divine law, or the law of nature. Else it never could have been just. And yet, it was observed as just, by that most just time of the Apostles. Nor can it be denied to be reasonable, which the whole primitive Church observed. Lastly, by the enacted law [jure] any Bishop, or Superior, or Prelate, immediately subject to the Apostolic see, can choose for himself a confessor [7]. Why then could not the same be brought in by custom? But if this very thing could be brought in by custom, why not that all Presbyters should do the same? And if this too, why not, that all men of one village or town? and consequently also, why not, that all Christians?"

With regard to the abstract principles stated by

[4] Dist. 35. c. 2, and l. si unus § pactus ne peteret ff. de pactis.
[5] Ad Decr. Greg. i. 2. 6. & 8. [6] Cap. fin. de consuetud.
[7] Greg. 9. A.D. 1232. Decr. Greg. l. v. Tit. 39. c. 16.



Mr. Allies, they relate rather to the abstract question of jurisdiction than to its application. The point upon which they bear is, whether or no presbyters, or the second order of the ministry, have in themselves by their ordination, independently and completely, the power of hearing confessions, and absolving any penitents who come to them for that end. And this not as regulated, or capable of being regulated by the Church, but indefeasibly in themselves. This is the real question which is mooted by schoolmen and others, under the form "whether [8] the Priest can use the key which he hath towards any one?" "Whether [9] any Priest can absolve any one?"

The principles do not apply to the question, whether the Church, locally or generally, may, either tacitly or expressly, give or leave to Priests that power. Several of these principles have been incidentally considered already.

Perhaps it will be clearest to take them as they stand in his pamphlet. "The [1] *lawful exercise* of this power [of absolution] belongs to jurisdiction." In other words one might say, "this power can only be rightly, or, as it is said, validly, exercised according to the laws of the Church." It is not an arbitrary power to be exercised at the will of the Priest. As to this there is no question. The question is, What

[8] Aq. in iv. dist. 19. q. 1. Art. 3.
[9] Alex. Alens. iv. q. 21. membr. 3. Art. 2, and others.
[1] Royal Suprem. p. 54.

are the laws of the Church? "Lawful[2] authority" is all which is meant by jurisdiction.

"The power, in its own nature, stretches to the absolution of all [penitents], and therefore these words of our Lord, repeated by the Bishop in his person, are so indeterminate and universal; but the use of that power is limited according to the jurisdiction possessed by the Priest, and this must come by a *further* grant from his superior[3]."

This last statement belongs to the too limited view which Mr. Allies takes of the conveyance of jurisdiction. Jurisdiction is *not* conveyed by a *distinct* grant from a superior. In the "gift of cure of souls," as Mr. Allies says[4], "are comprised all means necessary for their well-being, of which the hearing confessions and giving absolution is assuredly one. Consequently all Parish Priests may be said to have ordinary jurisdiction for this purpose *over their own flock*, but not over others."

The cure of those particular souls is given by the Bishop, and in it the authority to give them "the benefit of absolution" before Holy Communion, if they "open their griefs," or to "move them to special confession of sins, if the sick man feels his conscience troubled with any weighty matter;" and so "if he humbly and heartily desire it," to

[2] See above, p. 26. 31. &c.

[3] Letter, p. 54. The first clause down to "indeterminate," is a translation of Aquinas in iv. dist. q. 1. Art. 3. The words "further grant," are Mr. Allies'.

[4] p. 56.



absolve him. This authority towards those particular souls is given him by the act which commits those souls to him. But the authority to absolve those who come to him, by virtue of the direction of the Church, comes from the *law* of the Church, which so directs them. This is possessed by them from the time of their ordination, if any, according to that law, come to them.

"A[5] man is ordained a Priest by a Bishop, and from that time forth he is as much a Priest as any one can be, yet he can perform no priestly act involving spiritual jurisdiction, without cure of souls, delegated to him either permanently, or at least during the performance of that act."

True; but according to the principles of the Church, the cure of that soul, which either by law, or by licence of man, or by custom[6], is *allowed* to come to a given Priest, is, "during the performance of that act," given to him by the law which so allows him.

"Neither[7] has the latter [a Priest] authority to exercise the power of the keys over this or that person, unless he has legitimate jurisdiction, *i. e.* the office of a spiritual superior over him."

But he has "legitimate jurisdiction," if the law allow the others to come to him.

"Even[8] the material key can only open its proper lock, nor can any active virtue take effect save on its proper matter. Now a person is made the proper

[5] p. 54. [6] Above, p. 31, &c. [7] p. 54. [8] p. 55.

matter of the power of order, by means of jurisdiction, and so no one can use the keys upon one over whom he has no jurisdiction."

These are Aquinas's words, wherewith he retorts an abstract argument from analogy, that "the[9] physical key which opens one ward, opens all others of the same sort. But all sin, of any man whatever, is an obstacle of the same sort with respect to the entrance of the kingdom of heaven. If, then, a Priest can absolve one man by the key which he hath, he can any other."

Such analogies are of course inadequate even as illustrations. This applies only to the question of an inherent power, illimitable by the law of the Church or by the Bishop. But as relates to the "proper matter," it is held that a person becomes the "proper matter" whenever he, by any means, may "*lawfully* go to any Priest."

"For[1] absolution from sin after sacramental confession a twofold power is required, the power of order and the power of jurisdiction. The first is equally in all Priests, but not the second, which descends from superiors to inferiors, and must be used according to the limitation imposed by the superior." To show that we are bound by limita-

[9] l. c.

[1] Ib. Aquinas' words are, "The power of orders in itself extends to the remission of all sins, but because, as was said, to the use of this power jurisdiction is required, which descends from superiors to inferiors, therefore a superior *can* reserve *some things* to himself."



tions, *if imposed*, is not to show that Bishops are bound to make those limitations.

Aquinas uses this statement that "jurisdiction descends from superiors to inferiors," in order to show that "a superior *may* reserve some things to himself wherein he should not commit the judgment to an inferior." Such are, 1. "when the solemn course of penitence is to be imposed, of which the Bishop is the proper minister;" 2. As to the excommunicate, whom an inferior Priest cannot absolve; 3. An irregularity which requires the dispensation of a superior; 4. Incendiaries; 5. "When it is the custom in any Bishopric that enormous sins are, *ad terrorem*, reserved for the Bishop; for custom gives or takes away power in these." All this, then, belongs to "positive law," and is changeable.

Both "orders" and authority come from the superior. "*Order*" is given *directly* in ordination: authority to use it, or jurisdiction, although it comes ultimately from the superior, *i. e.* the Bishop, may come *indirectly* (as said so often above), either by law or by custom, &c. *Conditionally*, authority is held to be given in "orders" itself, *i. e.* authority to absolve penitents, subject to the rules of the law.

"All absolution pronounced by a Priest over a person not spiritually subject to him, is utterly without force: and a person cannot make himself subject to another at his own will; for this power descends from above, and does not ascend from below."

This principle, that "a person cannot make himself subject to another at his own will," we have already [2] seen, when stated thus broadly, not to be true.

We cannot *withdraw* ourselves from lawful jurisdiction, under which, by God's appointment, we are placed, in order to place ourselves under other. But then the fault is in withdrawing, and so denying that jurisdiction. If the Church places you under no jurisdiction, but bids the Parish Priest invite you to come to "him or some other," you can be guilty of no withdrawal from lawful authority, and so are not guilty of any thing wrong in seeking "some other" Priest, to unburthen your conscience to him.

I must again say that it seems to me a technical paradox that a person cannot subject himself to another, so as to confess his sins to him. Aquinas expressly refutes it. He puts it as an objection. "It [3] seemeth that one cannot use the keys to his own superior. For the sacramental act requires its own matter. But the proper matter of the use of the keys, as was said, is one who is subject. Therefore in him who is not subject, the Priest cannot use the keys." He answers, "Although a Bishop whom a simple Priest absolves, is, in the abstract, superior to him, yet he is inferior to him, as far as he has subjected himself to him, as a sinner to a Priest." Again, in contrasting the "judgment of

[2] p. 35, sqq. [3] l. c.



confession with that of the outward court, in which an inferior cannot excommunicate or absolve a superior," he says, "The outward judgment relates to man, but the judgment of confession is *as to God, before Whom every one is made inferior*, by the very fact that he sins." He cannot, as I said, *withdraw* himself from one to place himself under another; but if the law of the Church is not transgressed, what is there to hinder a sinner from submitting himself to one who has received of his Lord authority to absolve him?

The principles upon which the Pope is supposed to choose his confessor, as I pointed out [4], illustrates this case. He can "submit himself" to whom he will, *because* he is under no restriction. Since the law does not subject him to any one, he, since he withdraws from none, may subject himself to whom he will. In like way, Bishops in the West may *by law* submit themselves. But there is no difference in principle whom the law allows to submit himself. He who receives him has his sanction from the law.

I have already considered the statement that "in [5] default of either ordinary or delegated jurisdiction, a Priest cannot, by the mere power of order, hear confession and give absolution; and if he does so, his absolution will be *null* and *void*."

"Ordinary jurisdiction for hearing confessions and giving absolution" all Parish Priests have over their own flock. "Delegated jurisdiction" is, by the

[4] p. 35, sqq. [5] p. 21, sqq.

common rule of the Western Church, possessed by any Priest towards one whom the Church, and in it the Pope, Bishop, or Parish Priest, by law or by custom, tacitly or expressly, allowed *not* to confess to the Parish Priest. All our priests have delegated jurisdiction from the *law* of the Church towards all who "come to" them.

The letter varies in words only.

It has the same statements of the invalidity of "acts flowing from jurisdiction, if done upon those over whom the doer has no jurisdiction;" "the reason of which," it says, "that jurisdiction being a relation of command between a superior and a subject, one who has no subject can have no jurisdiction, and accordingly cannot exercise a power which he has not received."

As relates to the *argument*, the answer is the same as before, that every Priest has jurisdiction towards one who may *lawfully* go to him. The language of this statement is somewhat harsh, as Mr. Allies would feel, if it were applied to the Pope, or a Bishop, using confession to any simple Priest. It is true that, as Soto says, "The[6] Pope or Bishop has to obey him whom he has chosen as a confessor, just as the rest of Christians;" in other words, one who consults a physician of the soul has to obey that physician. But no penitent whatever (unless he fall under excommunication, which is distinct), comes under "a relation of command between a

[6] In iv. dist. 18. q. 4. Art. 2. p. 462.



superior and a subject" in any other sense, than a Pope or a Patriarch. I notice this, because being a somewhat hard translation of scholastic language, it might tend to increase the prejudice against confession in the minds of those who know it not. Our chief office, as you know, is as fathers and as physicians. We would help to "bear one another's burdens." The world thinks of us as though we laid burdens upon those who come to us, instead of being the instruments of lightening them.

"The[7] act of remitting sin upon confession is an act not only of order, but of jurisdiction. That it is an act of order nobody doubts, and therefore proof is needless. That it is, likewise, an act of jurisdiction, is proved by two considerations: first, it is a judicial power, and all judgment to be valid requires jurisdiction. And, secondly, it is not only a power of remitting, but also of binding; and none can bind one who is not his subject."

Excommunication, in the outward court is, strictly speaking, an act of judgment. The sentence is a judicial sentence. In private confession the "judgment" is subordinate, whence Aquinas calls it "a sort of judgment." Certainly, a Priest is bound to use judgment in discriminating the character and grievousness of offences, which the penitent often cannot estimate, but even inverts, sometimes unduly oppressed by lesser faults, and underrating the heavier, and not unfrequently mistaking his whole

[7] Letter.

character, and not discerning wherein the root of his sinfulness lies. In difficult cases, the Priest has often to judge whether an act be or be not sin, or to what degree it was sin. He has also to declare the judgment of Almighty God against the offences which He condemns. And as to the individual himself, he must judge (as far as man can judge, and subject to His judgment Who seeth the heart,) whether one who thus seeks the benefit of absolution, have that temper of faith and repentance, and earnest purpose to forsake sin, in which alone he can receive absolution beneficially. It would be to profane the authority committed by Christ to His Church, to pronounce pardon in His Name on the impenitent—a pardon which would not be confirmed in heaven, and which would but aggravate the previous sin, and harden the heart. The power of judging is entrusted to us *for* the sake of those who come to us. But there is no ground why it should not be sufficient for a penitent voluntarily to submit himself to such judgment. He must, in truth, voluntarily submit himself, for, as has been said, "even if the Priest knew the sin of the penitent, he could have no power of acting towards him, as a judge, in the penitential court, unless the penitent himself voluntarily submitted himself." The penitent does not give the authority to the Priest, but rather goes to him who has authority to absolve him in the Name of the Father, the Son, and Holy Ghost. And *he* has this authority, according to the principles of the



Church, whom the Church in whatever way allows to exercise it.

As to the second statement, to "bind" in the court of outward discipline, is to place under the censures of the Church. The sinner is inwardly tied and bound already by the chain of his sins. He whom our Lord had recalled to life, but left to be loosed by those whom He bade to loose him, was bound already. To "bind," then, *here*, is rather to "leave bound." If the Priest is compelled not to absolve any one, or to put him off for a time, that he may come with true sorrow, he does not bind him faster,—he leaves him as he was. He comes to the Priest because he cannot otherwise go to Holy Communion "with a quiet conscience." The Priest, if for the time he dare not speak "peace, when there is" as yet "no peace," leaves him more hopeful than before. He does not bind him anew, but waits in order to unbind him more healthfully.

This power every Priest must have towards one who "opens his griefs" to him. He is not an automaton; he has an office of which he must give account; he must as little speak peace falsely, as make sad the heart of the righteous or the true penitent. On the other side, it is true that a person cannot "loose" one whom he is not entitled to loose. But when the Church gives a person freedom to go to whom he will, then the Priest is entitled to exercise that office of mercy in his Redeemer's Name freely.

The Church has power to give to all her Priests that same authority to absolve without limitation, which is given by a Bishop to a Vicar-general or Penitentiary[8] over his whole diocese, or by the Pope to whole Orders. That "penitentiary" had not those whom Mr. Allies would call "his subjects." He had power to absolve, not this or that person, but all. But they were not in the first instance under his authority. They were not bound to come to him. He had authority to absolve them, but not, in the first instance, authority *over* them. Mr. Allies' statement is, that they were persons delegated by the Bishop to hear confessions, when the case might require it. He has no more jurisdiction or authority over them. He is simply entitled to receive and absolve them, lawfully coming to him. Every Priest has the same, to whom persons may come by the law of the Church.

"Every[9] ecclesiastical act and function ought to be regulated by its Bishop either doing it immediately, or by means of others who receive from him their commission and authority to do it. And especially an act so principal in the government of souls as the absolving them from sins, cannot be regulated but by the Bishop, nor done but by authority emanating from him."

True it is, as St. Cyprian says, "Each prelate hath

[8] The Pœnitentiarius appears to have been appointed especially to assist the Bishop in cases which would be referred to him, or to hear the confessions of Priests.

[9] Letter.



in the government of the Church[1], his own choice and will free, hereafter to give account of his conduct to the Lord. But the Bishops are equally free, for "the[2] harmonious concord" of the whole, to forego a portion of their own freedom. They may regulate this office in common, and once for all. It would be to restrain his power to exclude this particular sort of "regulation," that, considering the great difficulty in opening the conscience at all, Bishops should leave it entirely free to those with burdened consciences to seek whom they would.

Lastly, the letter instances, as a proof of this limitation, that "certain cases were reserved by the Bishop to himself." This shows that he has the power to keep the whole authority to himself; but it does not show that he has no power to delegate that authority to the presbyters indiscriminately, or that the Bishops collectively might not take away all restriction.

We have already seen[3] that Archbishop Cranmer meant to suggest that such cases should no longer be "reserved." Of the cases instanced by Aquinas, excommunication only is reserved to the Bishop, as belonging to the outer court. As in those "reserved cases," the Bishops might or might not reserve them, and if they reserved them, the Priest would

[1] Ep. 72. fin. 55. § 17. 69. fin. Conc. Carth. p. 286. Oxf. Tr.

[2] Ep. 59. § 19.

[3] See above, p. 110.

not be free, but would be free if they did not; so also as to the whole. The more entirely the jurisdiction lies in the Bishops, the more it follows that they might retain it wholly to themselves, or use it, associating presbyters with themselves, or delegate it to certain individuals, or give it (as is now common in the Eastern Church) to the monks[4], or confide it permanently to all Parish Priests within their own parishes, or give it without restriction to all. And as this ordinary power of using the keys within certain limits may, according to Mr. Allies, be given tacitly and *ipso facto* to all Parish Priests within their cures, so there is no principle to prevent the power of the keys being given to all Priests to be exercised by them at their own discretion.

All these abstract principles in common, as I said, are founded on a narrow view of jurisdiction, as if the necessary authority could only be given to Priests by direct delegation from the Bishop, either tacitly, with cure of souls, "*over those particular souls*," or expressly to certain Priests selected by themselves. On this narrow view followed a narrow interpretation of the invitation of the Church to those who could not quiet their consciences, which she requires every Priest to use, "let him come to me or to some other." This, according to the principles of the Church, before the Council of Trent, gives full liberty to any parishioner to go to whom he will,

[4] "Almost all the Greek confessors are monks." Concil. T. 38. p. 520, not. ed. Reg.



and to any Priest to receive him. It is a delegation by the law of the Church to all Priests to receive those who come to them for this office, to receive the benefit of absolution before Holy Communion.

There seems to me no possibility of flaw in this. Before the Council of Trent no licence was required; no leave from the Parish Priest or individual Bishop, when the *law* gave leave. But here the Bishops are included by the use of the Common Prayer Book, and the Parish Priest by the law of the Church, in obedience to which he uses the words and gives the leave.

It may, perhaps, be well just to mention the Service for the Sick, since there the Parish Priest is specifically mentioned. But it is to be observed that the Rubric imposes a duty upon the Priest, it does not restrain the Parishioner. In sickness, among other duties, the Priest is required to "move the sick man to" this. He is bidden to suggest it to him. The Parish Priest would mostly be the Priest by the sick man's side. But it is inconceivable that the Church of England, when she was removing the limitation, that persons shall, except with leave of the Parish Priest, confess once in the year to him, should, by a side wind, restrict that which the charity of the whole Church had ever left free[5]. It is contrary to all principles of interpretation to explain negatively what is decreed positively, and

[5] See above, p. 59, sqq.

to infer that because the Church of England requires the Priest who visits the sick man to remind him of what may be for his soul's health, therefore she deprives the sick man of that freedom to choose to whom he would "open his griefs," which she had given him during his whole life. Besides this, the Church of England has provided a short but special service for the Communion of the Sick. The rule, then, as to the Holy Communion, equally comes in here. Confession, if used, would precede the Holy Communion. But before Holy Communion, the Church left him free to choose in life. Can any conceive that the Church would be less tender, if he wished it, in sickness or death, when she had been so tender all his life long? Impossible.

Yet there may remain this prejudice, Can this be the purpose of the Church of England, since it has been so neglected? How is it that Confession, although the fact is notorious, is not, as in the Church of Rome, used in open churches? Negligence of a law can never be an argument to explain away its plain meaning. This argument would go too far. It would go, not to the question which this letter raises, but to the use of Confession altogether. And yet the Church of England expressly commands each Parish Priest to "move each sick person to make a special confession of his sins, if he feel his conscience to be troubled with any weighty matter."

But, again, did the Church of England mean her children not to fast, when she set down days of fasting



and abstinence, and required the Curate to give notice of them? or did she mean that the Holy Communion should in Cathedrals be celebrated once in the month, or in our Colleges once only in the term, when she directed, "In Cathedral and Collegiate Churches and Colleges, where there are many Priests and Deacons, they shall all receive the Communion with the Priest every Sunday *at the least*, except they have a reasonable cause to the contrary?"

Or did she mean that no children should be catechized in Church during the evening service, when she directs: "The Curate of every Parish shall diligently upon Sundays and Holy-days, after the second lesson at Evening Prayer, openly in the Church, instruct and examine so many children of his parish sent unto him, as he shall think convenient, in some part of this Catechism?"

I do not mean that the Church may not alter her rules, but that their non-observance is no proof that she never intended them to be in force.

Negligence has no prescription to be the interpreter of the Church's meaning, to be the guardian of her laws, to enforce their continued desuetude. It has no Divine right to reign undisturbed in the throne which it usurps. It cannot hold against the lawful possessor, tender Mercy who binds up every wounded heart that comes to her.

This revival of Confession is, as I said, the teaching of God through the Church. It is, in one way, a

comfort that man did not teach it; for we are the more sure that it was the teaching of God. We taught repentance; God through the Church taught thousands of souls how to find healthful peace. All have felt, doubtless, how at one time more than at another, words of Holy Scripture spoke unto them out of the pages of their Bible, in a way in which they had never spoken before. You well recollect how St. Augustine was converted by the voice, "Take up, read;" and he read, "Put ye on the Lord Jesus Christ, and make not provision for the flesh to fulfil the lusts thereof." Even so, directions founded on Holy Scripture in our Prayer Book, which slept except here and there, while people led easy lives, awoke and spoke while their hearts were wounded.

But, like every revival, it is spoken against by those who value it not. And so, because it is so very sacred, it has been practised in silence. Who was to speak of the individuals who used it? Who speaks of his devotions? Who tells of his own silent tears before God, or the anguish of his heart, or the Divine consolations? Who would wish that one of the most sacred actions of his life, should be made the subject of the angry strife, the jest, the mockery of a profane and irreligious world? "What if some did not believe? shall their unbelief make the faith of God without effect?" The religion of the English is especially retiring. We speak little of what we feel most deeply; we do not say, mostly, our private prayers in Churches, because



we prefer "praying to our Father in secret." Why should we throw the Church doors open for this most sacred act between our own soul and God, for any chance wayfarer, whose heart God has not touched, to marvel at? When we have, by God's grace and blessing, Christianized the heathen population of our towns, it will be time to think of throwing open our Churches, that all may, as of old in the public penitence, weep with those who weep, and rejoice with those who, having been lost, are found. When among all, "as brethren and fellow-servants, there is one hope, one fear, one joy, one suffering, because there is One Spirit from One Lord and Father[6];" when God shall have "made" us "of one mind in one house," it will be time to open the Church doors, because passers-by will pray with us, not gaze. Now, the Church appeals to her children individually. Each can alone know his own grief. No other can judge for us as to that which is known only to ourselves and God. We cannot ask advice, without laying open our griefs before-hand, *i. e.* making confession to one unauthorized to receive it, and not bound to hold it sacred. The Church, in a matter strictly of private conscience, appeals to us one by one: "If there be any of you, who by this means cannot quiet his own conscience herein, but requireth further comfort or counsel, let him come to me, or to some other

[6] Tertull. de Pœnit. c. 10. p. 366. Oxf. Tr.

discreet and learned Minister of God's word, and open his grief." We, each of us alone, are to give account of ourselves before God. We each of us "know our own sore and our own grief."

The Prayer Book is the voice and teaching of the Church. It teaches with a voice unchanged. If an exhortation, which before her most solemn service the Church directs her ministers to use, is not the voice of the Church, what is or can be? It has spoken, it does speak, it will speak more and more, as hearts become more tender, more anxious to have every spot of sin removed, more sensitive of every thing displeasing to the eyes of the All-Holy God.

The remedy against any abuse will not be in the limitation of the office, but in the increased instruction of the Parish Priest. We have not, at present, generally the most difficult cases, because those who come to confession, come willingly with true repentance. It is a most precious part of the cure of souls, the feeding of the sheep and lambs of Christ. It is our Lord's own office, "to heal the broken-hearted, and set at liberty those that are bruised." It is to comfort the afflicted, to relieve the doubtful, to guide the perplexed, to strengthen the weak, to conduct along the narrow way, to teach how to conquer the besetting sin, to rekindle the still smoking flax, to guard against backsliding, or recover those who have gone backward to the ground, to ease the burthened conscience, to bring back the peace of God. These are God's works



through His own Ordinance. We have seen it, heard it, felt it, handled it. We saw that it was "the Lord's doing, and it was marvellous in our eyes." In this is our comfort, our hope. He through the Church revived it; He enlarged it; He poured out His grace through it; He continued what He began. To Him be the glory, and thanksgiving, and praise, for ever and ever, as it will be through the souls whom He has saved.

May God enrich you in all things, and in this fruit also.

Ever your very affectionate friend,

E. B. PUSEY.

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